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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

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3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, May 17, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AK64

Prevailing Rate Systems; Environmental Differential Pay for Asbestos Exposure

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim regulation to implement a change in law that requires the use of the Occupational Safety and Health Administration permissible exposure limit standard for concentrations of airborne asbestos fibers for an environmental differential pay category that covers Federal prevailing rate (wage) employees.

DATES: This interim regulation is effective on April 27, 2005. The Office of Personnel Management must receive comments by June 27, 2005.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.go;* or fax: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or fax: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing an interim regulation to incorporate the Occupational Safety and Health Administration (OSHA) permissible exposure limits (PELs) standard for concentrations of airborne asbestos in the Federal Wage System (FWS) environmental differential pay (EDP) category for asbestos, as required by section 1122 of the National Defense Authorization Act for 2004 (Public Law 108–136, November 24, 2003).

OPM establishes EDP categories under section 5343(c)(4) of title 5, United States Code, which provides that EDP may be paid for ''duty involving unusually severe working conditions or unusually severe hazards.'' Section 1122 of Public Law 108–136 amended section 5343(c)(4) by adding ''and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970.'' This change in law became effective on November 24, 2003.

The FWS EDP categories are contained in appendix A to subpart E of part 532 of title 5, Code of Federal Regulations. The current rule covering asbestos exposure for FWS employees provides that Federal agencies may pay their prevailing rate employees a differential for ''[w]orking in an area where airborne concentrations of asbestos fibers may expose employees to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury.'' This interim regulation would revise part 532 to implement section 1122 for prevailing rate employees and require Federal agencies to apply occupational safety and health standards consistent with the permissible exposure limit (PEL) promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 as published in title 29, Code of Federal Regulations, §§ 1910.1001 or 1926.1101 (construction work only). Any OSHA regulatory change in the PELs for asbestos will be applied automatically to OPM's regulations effective on the first day of the first pay period beginning on or after the effective date of the change in the PELs.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists to waive the general notice of proposed rulemaking to comply with the change in law required by Public Law 108–136, which was enacted on November 24, 2003. The waiver of the requirements for proposed rulemaking and of the delay in the effective date are necessary to comply with the change in law in a timely manner.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Dan G. Blair,

Acting Director.

■ Accordingly, the Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix A to subpart E of part 532, category 16 in the table titled ''Part II—Payment on Basis of Hours in Pay Status'' is revised to read as follows:

Appendix A to Subpart E of Part 532—Schedule of Environmental Differentials Paid for Exposure to Various Degrees of Hazards, Physical Hardships, and Working Conditions of an Unusual Nature

PART II—PAYMENT ON BASIS OF HOURS IN PAY STATUS

Differential rate (percent)	Category for which payable	Effective date
*	* * * * * * *	*
8	16. *Asbestos.* Working in an area where airborne concentrations of asbestos fibers may expose employees to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury. This differential will be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 as published in title 29, Code of Federal Regulations, §§ 1910.1001 or 1926.1101. Regulatory changes in §§ 1910.1001 or 1926.1101 are hereby incorporated in and made a part of this category, effective on the first day of the first pay period beginning on or after the effective date of the changes.	Nov. 24, 2003.

* * * * *

[FR Doc. 05–8331 Filed 4–26–05; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV05–932–1 FR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Olive Committee (committee) for the 2005 and subsequent fiscal years from $12.18 to $15.68 per ton of olives handled. The committee locally administers the marketing order regulating the handling of olives grown in California. Authorization to assess olive handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The current fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective April 28, 2005.

FOR FURTHER INFORMATION CONTACT: Laurel May, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. The assessment rate issued herein will be effective beginning on January 1, 2005, apply to all first handled assessable olives from the current crop year, and will continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the committee for the 2005 and subsequent fiscal years from $12.18 per ton to $15.68 per ton of olives first handled from the applicable crop years.

The California olive marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The fiscal year, which is the 12-month period between January 1 and December 31, begins after the corresponding crop year, which is the 12-month period beginning August 1 and ending July 31 of the subsequent year. Fiscal year budget and assessment recommendations are made after the corresponding crop year olive tonnage is reported. The members of the committee are producers and handlers of California olives. They are familiar with the committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004 and subsequent fiscal years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on December 13, 2004, and unanimously recommended fiscal year 2005 expenditures of $1,217,014 and an assessment rate of $15.68 per ton of olives first handled during the 2004–05 crop year. In comparison, the expenditures for fiscal year 2004 were originally budgeted at $1,269,063. In July of 2004, the committee voted unanimously to increase the budget by $117,535 to fund a research project. The committee's reserves were used to fund the revised budget. The revised budget for 2004 totaled $1,386,598.

The assessment rate of $15.68 is $3.50 higher than the $12.18 rate currently in effect. Expenditures recommended by the committee for the 2005 fiscal year include $680,000 for marketing activities, $337,014 for administration, and $200,000 for research. Budgeted expenses for these items in 2004 were originally $633,500 for marketing activities, $360,563 for administration, and $225,000 for research. The revised 2004 budget provided $342,535 for research.

The assessment rate recommended by the committee was derived by considering anticipated fiscal year expenses (including restoration of the reserve funds allocated to the 2004 emergency research project), actual olive tonnage received by handlers during the 2004–05 crop year, and additional pertinent factors. The California Agricultural Statistics Service (CASS) reported olive receipts for the 2004–05 crop year at 85,862 tons, which compares to 102,703 for the 2003–04 crop year. The reduction in the crop size for the 2004–05 crop year, due in large part to the alternate-bearing characteristics of olives, has made it necessary for the committee to recommend an increase in the assessment rate from the current $12.18 per assessable ton to $15.68 per assessable ton, an increase of $3.50 per ton. Income derived from handler assessments, interest, and utilization of reserve funds will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order of approximately one fiscal period's expenses (§ 932.40).

The assessable tonnage for the 2005 fiscal year is expected to be less than the 2004–05 crop year receipts of 85,862 tons reported by CASS, because some olives may be diverted by handlers to uses that are exempt from marketing order requirements.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2005 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 910 producers of olives in the production area and 3 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities. One of the handlers may be classified as a small entity, but the majority of the handlers may be classified as large entities.

This rule increases the assessment rate established for the committee and collected from handlers for the 2005 and subsequent fiscal years from $12.18 per ton to $15.68 per ton of first handled olives from the applicable crop years. The committee unanimously recommended 2005 expenditures of $1,217,014 and an assessment rate of $15.68 per ton. The assessment rate of $15.68 per ton is $3.50 per ton higher than the 2004 rate.

The quantity of olive receipts for the 2004–05 crop year was reported by CASS to be 85,862 tons, but the actual assessable tonnage for the 2005 fiscal year is expected to be lower. This is because some of the receipts are expected to be diverted by handlers to exempt outlets on which assessments are not paid.

The $15.68 per ton assessment rate should be adequate to meet this year's expenses. Funds in the reserve will be kept within the maximum permitted by the order of about one fiscal period's expenses (§ 932.40).

Expenditures recommended by the committee for the 2005 fiscal year include $680,000 for marketing development, $337,014 for administration, and $200,000 for research. Budgeted expenses for these items in 2004 were originally $633,500 for marketing development, $360,563 for administration, and $225,000 for research. The research budget was increased to $342,535 in July 2004 to fund an additional project unanimously recommended by the committee.

In 2003–04, olive receipts totaled 102,703 tons compared to the 2004–05 crop year's tonnage of 85,862. Although the committee decreased 2005 budgeted expenses, the significant decrease in olive production makes the higher assessment rate necessary.

The research expenditures will fund studies to develop chemical, biological, and cultural controls of the olive fruit fly in the California production area. The budget for market development expenditures has been increased because the committee's marketing program for 2005 has been expanded to include nutrition and education outreach activities for wider audiences. Some of the outreach activities include cookbook contributions, school activities, and website development. The committee reviewed and unanimously recommended 2005 expenditures of $1,217,014, which reflect an increase in the market development budget and decreases in the research and administrative budgets.

Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Executive Subcommittee and the Market Development Subcommittee. Alternate spending levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry and the anticipated olive production. The assessment rate of

$15.68 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives first handled from the 2004–05 crop year, and additional pertinent factors.

A review of historical and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2004–05 crop year is estimated to be approximately $720 per ton for canning fruit and $276 per ton for limited-use size fruit. Approximately 85 percent of a ton of olives are canning fruit sizes and 10 percent are limited-use sizes, leaving the balance as unusable cull fruit. Total grower revenue on 85,862 tons would then be $54,917,335 given the percentage of canning and limited-use sizes and current grower prices for those sizes. Therefore, with a $15.68 per ton assessment rate, the estimated assessment revenue is expected to be approximately 2.33 percent of grower revenue.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 13, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on February 22, 2005 (70 FR 8545). Copies of the rule were mailed or sent via facsimile to all committee members and olive handlers. Finally, the rule was made available through the Internet by USDA and the Office of the **Federal Register**. A 30-day comment period was provided to allow interested persons to respond to the proposal. One comment was received, but that comment was not relevant to this rulemaking action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2005 fiscal year began on January 1, 2005, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled; (2) the committee needs sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action, which was unanimously recommended by the committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a 30-day comment period was provided for in the proposed rule and no relevant comments were received.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2005, an assessment rate of $15.68 per ton is established for California olives.

Dated: April 21, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–8360 Filed 4–26–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20251; Directorate Identifier 2004–NM–164–AD; Amendment 39–14071; AD 2005–09–03]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon Model Hawker 800XP airplanes. This AD requires inspecting to detect damage of certain wiring in the flight compartment, performing corrective actions if necessary, modifying certain wiring connections, and revising the airplane flight manual. This AD is prompted by reports of miswiring in the power distribution system. We are issuing this AD to ensure that the flightcrew is aware of the source of battery power for certain equipment, and to prevent damage to wiring and surrounding equipment that could result in smoke or fire on the airplane.

DATES: This AD becomes effective June 1, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of June 1, 2005.

ADDRESSES: For service information identified in this AD, contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–20251; the directorate identifier for this docket is 2004–NM–164–AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road,

room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for certain Raytheon Model Hawker 800XP airplanes. That action, published in the **Federal Register** on February 2, 2005 (70 FR 5387), proposed to require inspecting to detect damage of certain wiring in the flight compartment, performing corrective actions if necessary, modifying certain wiring connections, and revising the airplane flight manual.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 45 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S. -registered airplanes	Fleet cost
Inspection	18	$65	None	$1,170	30	$35,100
Modification	6	65	435	825	30	24,750

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–09–03 Raytheon Aircraft Company: Amendment 39–14071. Docket No. FAA–2005–20251; Directorate Identifier 2004–NM–164–AD.

Effective Date

(a) This AD becomes effective June 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Raytheon Model Hawker 800XP airplanes, certificated in any category, serial numbers 258541, 258556, and 258567 through 258608 inclusive.

Unsafe Condition

(d) This AD was prompted by reports of miswiring in the power distribution system. We are issuing this AD to ensure that the flightcrew is aware of the source of battery power for certain equipment, and to prevent damage to wiring and surrounding equipment that could result in smoke or fire on the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Information Reference

(f) The term ''service bulletin,'' as used in this AD, means Raytheon Service Bulletin SB 24–3555, Revision 1, dated June 2004.

(1) Where the service bulletin specifies contacting the manufacturer for information, this proposed AD requires, before further flight, contacting the Manager, Wichita Aircraft Certification Office (ACO), FAA. Then, before further flight, any applicable action specified by the Manager, Wichita ACO, must be accomplished in accordance with a method approved by the Manager, Wichita ACO.

(2) The service bulletin also refers to Raytheon Hawker 800XP Temporary Change P/N 140–590032–0005TC7, dated June 3, 2003, which is intended to be inserted into the Emergency Procedures section of the airplane flight manual to inform the flightcrew which standby batteries provide power to what equipment once the actions in the service bulletin have been done.

(3) Where the service bulletin specifies to report compliance information to the manufacturer, this AD does not include that requirement.

Inspection

(g) Within 50 flight hours or 30 days after the effective date of this AD, whichever is first: Perform a detailed inspection for damage (primarily but not limited to evidence of heat damage) of wiring in the

flight compartment, and all applicable corrective actions, by doing all actions in Part 1 of the Accomplishment Instructions of the service bulletin, except as provided by paragraphs (f)(1) and (f)(3) of this AD. Any applicable corrective action must be done before further flight.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Modification

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, modify wiring in the flight compartment by doing all actions in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Following accomplishment of the actions in Part 2 of the service bulletin, before further flight, do all actions associated with the functional test, including revising the Emergency Procedures section of the Raytheon Hawker 800XP Airplane Flight Manual to include the information in Temporary Change P/N 140–590032–0005TC7, in accordance with the Accomplishment Instructions of the service bulletin.

(1) If no damage was found during the inspection required by paragraph (g) of this AD: Do paragraph (h) within 300 flight hours or 180 days after the effective date of this AD, whichever is first.

(2) If any damage is found during the inspection required by paragraph (g) of this AD: Do paragraph (h) before further flight after the damage is found.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Wichita ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(j) You must use Raytheon Service Bulletin SB 24–3555, Revision 1, dated June 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. To view the AD docket, contact the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, contact the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 18, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–8272 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2004–19947; Amendment No. 91–285]

RIN 2120–AI42

Pyrotechnic Signaling Device Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on direct final rule.

SUMMARY: On December 27, 2004, the FAA published a direct final rule to remove the requirement for a pyrotechnic signaling device required for aircraft operated for hire over water and beyond power off gliding distance from shore for air carriers operating under part 121 unless it is a part of a required life raft. All other operators continue to be required to have onboard one pyrotechnic signaling device if they operate aircraft for hire over water and beyond power off gliding distance from shore. The rule was effective February 7, 2005.

ADDRESSES: The complete docket for the final rule on pyrotechnic signaling devices may be examined through the Department of Transportation's Docket Management System at *http://www.dms.dot.gov.* Use the Simple Search selection and type in the docket number, 19947.

FOR FURTHER INFORMATION CONTACT: Joe Keenan, AFS–200, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9579.

SUPPLEMENTARY INFORMATION:

Background

The final rule, request for comment, was published in response to several requests that the FAA eliminate the requirement that aircraft that operate for hire, over water, and beyond power off gliding distance from shore, carry one pyrotechnic signaling device in addition to those signaling devices required as part of each required life raft. The FAA considered petitioners arguments that the requirement of an additional pyrotechnic device, or flare gun, was unnecessary because other requirements, such as air traffic control, dispatch/flight following systems, and advanced communications provide an equivalent, if not greater, level of safety as that provided by the pyrotechnic signaling device. This requirement was limited to those operators conducting operations under Part 121 because all of the additional safety redundancies, such as dispatch/flight following, do not exist to the same extent in other operations.

Discussion of Comments

The FAA received seven comments on the pyrotechnic signaling device final rule. Three were from individuals, three were from air carriers (Southwest Airlines, American Airlines, and Net Jets), and one was from a trade association (the Regional Airline Association). Most comments favor the change. One individual commenter did not reflect support or opposition to the change. None of the comments reflect an adverse position to this final rule. The FAA's response to the comments follows:

Safety

All but one commenter expressed concerns about the safety and security of pyrotechnic signaling devices. One individual commenter stated that the devices were a high-pilferage item and pose a hazard of becoming a potential terrorist weapon. Another individual commenter expressed a general concern about a security hazard to the flight crew. Southwest Airlines and Net Jets inferred that pyrotechnic signaling devices are lethal weapons and constitute hazardous materials on the flight deck.

Three commenters, including American Airlines, inferred that these devices do not enhance safety. Southwest Airlines stated that the device would provide minimal value in locating an aircraft following a ditching at sea, assuming that a pilot could find it.

The FAA does not agree that pyrotechnic signaling devices are unsafe if stored and maintained in accordance with the manufacturer's instructions and personnel are properly trained in their use. Pyrotechnic signaling devices are still required whenever life rafts are required to be onboard. The FAA does not agree that a pyrotechnic signaling device might be hard to locate in a ditching emergency. FAA regulations require a passenger briefing composed of instructions to use in preparation for a ditching. Part of this preparation

includes use of emergency equipment, including life rafts and associated equipment (such as pyrotechnic signaling devices), before the actual ditching occurs. Crewmembers are required to be trained in the proper use of emergency equipment. Moreover, when pyrotechnic signaling devices are required as part of a life raft's survival equipment, they are generally inaccessible without removing the raft itself. In cases where the life raft's survival kit is stored separately from the raft, locations are typically not readily available for passenger access until actually needed.

Part 135 Relief

An individual commenter, Net Jets, and the Regional Airline Association stated they are in favor of including relief for part 135 operations. An individual commenter stated that all of the justification for part 121 operations is true for part 135 operations, as well. Net Jets stated that similarly situated part 135 operators should be provided with the same relief as part 121 operators, and noted the similarities between part 121 dispatch/flight following systems and the flight locating requirements of part 135. Net Jets also stated that the Part 125/135 Aviation Rulemaking Committee (ARC) is addressing the issue as it applies to part 135 operations. Net Jets stated that a complete power loss of a part 25 certificated turbojet airplane is extremely low.

Although the requirements differ, the FAA agrees that similarities may exist between part 121 flight following requirements and part 135 flight locating requirements. Also, while some 135 operators conduct operations very similar to part 121 operators, many do not so it would not be appropriate to provide the same blanket relief to all 135 operators. However, if a particular part 135 operator's flight locating system meets all of the requirements of a part 121 flight following system, relief provided in this rule change may be sought by that operator and evaluated by the FAA through the exemption process.

The FAA agrees that complete engine failure of a part 25-certificated airplane is extremely low. However, engine failure is not the only precursor to a forced ditching. Onboard fires, flight control malfunctions, and fuel exhaustion have also resulted in ditching incidents.

The FAA looks forward to receiving recommendations from the Part 125/135 ARC when they are complete.

Pyrotechnic Signaling Devices Required as Part of a Life Raft

An individual commenter stated that the rule should contain a requirement for positive proof that a pyrotechnic device required as part of a life raft is, in fact, onboard and goes on to question how an operator would determine that the device is installed in the life raft.

It is incumbent upon an operator to demonstrate compliance with any applicable requirements for a particular operation. For example, an operator may maintain an inventory of life raft-related equipment to satisfy this requirement when the equipment must be carried onboard for over-water operations.

Conclusion

After consideration of the comments submitted in response to the final rule, the FAA has determined that no further rulemaking action is necessary. Amendment 91–285 remains in effect as adopted.

Issued in Washington, DC, on April 21, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–8453 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket Nos. 1998F–0052 and 1999F–0187 (formerly Docket Nos. 98F–0052 and 99F–0187)]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Neotame

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections and denial of requests for a hearing.

SUMMARY: The Food and Drug Administration (FDA) is responding to objections and is denying requests that it has received for a hearing on the final rule that amended the food additive regulations authorizing the use of neotame as a nonnutritive sweetener in food. After reviewing the objections to the final rule and the requests for a hearing, the agency has concluded that the objections do not raise issues of material fact that justify a hearing or otherwise provide a basis for revoking the amendment to the regulation.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1267.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA published notices in the **Federal Register** on February 10, 1998 (63 FR 6762), and February 8, 1999 (64 FR 6100), announcing the filing of food additive petitions, FAP 8A4580 and FAP 9A4643, respectively, by Monsanto Co. to amend the food additive regulations in Part 172 *Food Additives Permitted for Direct Addition to Food for Human Consumption* (21 CFR part 172) to provide for the safe use of neotame as a nonnutritive sweetener for tabletop use (FAP 8A4580) and for general-purpose use in food (FAP 9A4643) where standards of identity do not preclude such use. The rights to these petitions were subsequently sold to the NutraSweet Co. In the **Federal Register** of July 9, 2002 (67 FR 45300), FDA issued a final rule permitting the safe use of neotame as a sweetening agent and flavor enhancer in foods generally, except in meat and poultry. The preamble to the final rule advised that objections to the final rule and requests for a hearing were due within 30 days of the publication date (i.e., by August 8, 2002).

II. Objections and Requests for a Hearing

Section 409(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(f)) provides that, within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such order may file objections, specifying with particularity the provisions of the order ''deemed objectionable, stating reasonable grounds therefore, and requesting a public hearing based upon such objections.'' FDA may deny a hearing request if the objections to the regulation do not raise genuine and substantial issues of fact that can be resolved at a hearing.

Under 21 CFR 171.110 of the food additive regulations, objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA's regulations. Under § 12.22(a), each objection must meet the following conditions: (1) Must be submitted on or before the 30th day after the date of publication of the final rule; (2) must be separately numbered; (3) must specify with particularity the provision of the regulation or proposed order objected to; (4) must specifically state the

provision of the regulation or proposed order on which a hearing is requested; failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection; and (5) must include a detailed description and analysis of the factual information to be presented in support of the objection if a hearing is requested; failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

Following publication of the neotame final rule, FDA received three submissions, within the 30-day objection period, objecting to the agency's safety evaluation of neotame as a general-purpose sweetener. Two of the submissions are essentially identical in content and assert that all of the studies that were discussed in the neotame final rule are meaningless because they are based on aspartame, which they claim has never been proven to be safe for use in food. Both of these submissions requested a hearing. The third submission questions the validity of the agency's exposure estimate for neotame and its metabolites. This same submission also asks a number of questions regarding the clinical studies that were conducted on human tolerance to neotame. The submission requested a hearing on both of these issues.

III. Standards for Granting a Hearing

Specific criteria for deciding whether to grant or deny a request for a hearing are set out in § 12.24(b). Under that regulation, a hearing will be granted if the material submitted by the requester shows, among other things, the following: (1) There is a genuine and substantial factual issue for resolution at a hearing; a hearing will not be granted on issues of policy or law; (2) the factual issue can be resolved by available and specifically identified reliable evidence; a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions; (3) the data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the requestor; a hearing will be denied if the data and information submitted are insufficient to justify the factual determination urged, even if accurate; and (4) resolution of the factual issue in the way sought by the person is adequate to justify the action requested; a hearing will not be granted on factual issues that are not determinative with respect to the action requested (e.g., if the action would be the same even if the factual issue were resolved in the way sought).

A party seeking a hearing is required to meet a ''threshold burden of tendering evidence suggesting the need for a hearing'' (*Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214–215 (1980), reh. denied, 446 U.S. 947 (1980), citing *Weinberger* v. *Hynson*, *Westcott & Dunning, Inc.*, 412 U.S. 609, 620–621 (1973)). An allegation that a hearing is necessary to ''sharpen the issues'' or to ''fully develop the facts'' does not meet this test (*Georgia Pacific Corp.* v. *EPA*, 671 F.2d 1235, 1241 (9th Cir. 1982)). If a hearing request fails to identify any factual evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute and a party is entitled to judgment as a matter of law (see Rule 56, Federal Rules of Civil Procedure). The same principle applies in administrative proceedings (see § 12.28).

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact concerning which a meaningful hearing might be held (*Pineapple Growers Ass'n* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing (see *Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959), *cert. denied*, 362 U.S. 911 (1960)). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information (see *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971)). In other words, a hearing is justified only if the objections are made in good faith and if they ''draw in question in a material way the underpinnings of the regulation at issue'' (*Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977)). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy (see *Citizens for Allegan County, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.), *cert. denied*, 358 U.S. 872 (1958)).

Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality can be validly applied to the administrative process. In explaining why these principles ''self-evidently'' ought to apply to an agency proceeding, the U.S. Court of Appeals for the District of Columbia Circuit wrote:

> The underlying concept is as simple as this: Justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity.

Retail Clerks Union, Local 1401 v. *NLRB*, 463 F.2d 316, 322 (D.C. Cir. 1972). (See *Costle* v. *Pacific Legal Foundation*, supra at 215–220. See also *Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.*, 404 F.2d 804 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1093 (1969).)

In summary, a hearing request must present sufficient credible evidence to raise a material issue of fact and the evidence must be adequate to resolve the issue as requested and to justify the action requested.

IV. Analysis of Objections and Response to Hearing Requests

FDA addresses each of the three objections in the following paragraphs, as well as the evidence and information filed in support of each, comparing each objection and the information submitted in support of it to the standards for granting a hearing in § 12.24.

Two submissions objected to the final rule asserting that all of the safety studies on neotame are meaningless because they are based on aspartame. Both submissions requested hearings on this point. As stated in the neotame final rule, to support the safety of neotame, the petitioner submitted, within the two petitions, a combined total of 113 preclinical, clinical, and special studies, plus an additional 32 exploratory and screening studies in a food master file on the safety of neotame and its metabolites, not aspartame. The objectors did not specifically address any of these studies. Further, the assertion that the safety evaluation of neotame is based on aspartame is baseless and completely false. FDA is denying the requests for a hearing on this point because there is no genuine and substantial issue of fact for resolution at a hearing, and a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions (§ 12.24(b)(1) and (b)(2)).

The third objection questioned the agency's exposure estimate for neotame and the clinical studies that were conducted and requested a hearing on these issues. However, the submission

provided no information that would support a reevaluation of the agency's exposure estimate or the clinical studies that were conducted. Therefore, this submission provides no basis for FDA to reconsider its decision to issue the final rule on neotame. Moreover, this submission provides no basis for granting a hearing because a hearing request must include specifically identified reliable evidence that can lead to resolution of a factual issue in dispute. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions (§ 12.24(b)(2)). Therefore, FDA is denying the hearing requested by this submission.

V. Summary and Conclusions

Section 409 of the act requires that a food additive be shown to be safe prior to marketing. Under 21 CFR 170.3(i), a food additive is ''safe'' if there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use. In the final rule approving neotame, FDA concluded that the data presented by the petitioner to establish safety of the additive demonstrate that neotame is safe for its intended use as a general-purpose sweetener and flavor enhancer in foods. The final rule did not authorize the use of neotame in meat and poultry.

The petitioner has the burden to demonstrate the safety of the additive in order to gain FDA approval. Once FDA makes a finding of safety, the burden shifts to an objector, who must come forward with evidence that calls into question FDA's conclusion (*American Cyanamid Co.* v. *FDA*, 606 F2d. 1307, 1314–1315 (DC Cir. 1979)).

None of the three objections received contained evidence to support a genuine and substantial issue of fact. Nor has any objector established that the agency overlooked significant information in reaching its conclusion. Therefore, the agency has determined that the objections that requested a hearing do not raise any substantial issue of fact that would justify an evidentiary hearing (§ 12.24(b)). Accordingly, FDA is not making any changes in response to the objections and is denying the requests for a hearing.

Dated: April 19, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–8352 Filed 4–26–05; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–VA–0001; FRL–7904–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; NO_X RACT Determinations for Four Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Virginia's State Implementation Plan (SIP). The revisions were submitted by the Virginia Department of Environmental Quality (VADEQ) to establish and require reasonably available control technology (RACT) for four major sources of nitrogen oxides (NO_X). These sources are located in the Western Virginia Emissions Control Area. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on June 27, 2005, without further notice, unless EPA receives adverse written comment by May 27, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0001 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/*. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *campbell.david commat;epa.gov*.

D. Mail: R03–OAR–2005–VA–0001, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–VA–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to the establishment of the 8-hour ozone nonattainment areas, EPA developed a program to allow these potential nonattainment areas to voluntarily adopt local emission control programs to avoid air quality violations and mandated nonattainment area controls. Areas with air quality meeting the 1-hour ozone standard were eligible to participate. In order to participate, state and local governments and EPA developed and signed a memorandum of agreement that describes the local control measures the state or local community intends to adopt and implement to reduce ozone emissions in advance of air quality violations. In this agreement, also known as an Early Action Compact (EAC), the state or local communities agree to prepare emission inventories and conduct air quality modeling and monitoring to support its selection of emission controls. Areas that participate in the EAC program have the flexibility to institute their own approach in maintaining clean air and protecting public health. For a period of time (generally not to exceed 5 years), participating areas can avoid a nonattainment designation.

Several localities in the Winchester and Roanoke areas have elected to participate in the EAC program. The areas that signed an EAC are the City of Winchester and Frederick County, which comprise the Northern Shenandoah Valley EAC; and the cities of Roanoke and Salem, and the counties of Roanoke and Botetourt, which comprise the Roanoke EAC. Virginia's strategy for enabling these localities to participate in the EAC program is to have them be subject to volatile organic compound (VOC) and NO_X control measures from which they had, until this time, been exempt. In order to enable the affected localities to implement these VOC and NO_X controls, the Virginia Regulations for the Control of Abatement of Air Pollution were revised to include these affected localities. In a separate rulemaking action, the list of VOC and NO_X emission control areas (9 VAC 5–20–206) was expanded to include the EAC areas as the Western Virginia Emissions Control Area. With this expansion, the VOC and NO_X control rules of Chapter 40 became applicable in these areas.

In order to implement the NO_X control measures, VADEQ adopted a regulation (Rule 4–4) which provides that VADEQ must, on case-by-case basis, determine whether there is RACT to reduce NO_X emissions from major sources for which EPA has not issued control techniques guideline (CTG). EPA has approved the regulation (Rule 4–4) in a separate rulemaking action. A major source in the Western Virginia Emissions Control Area subject to Rule 4–4, emits or has the potential to emit 100 tons per year of NO_X. CTGs are documents issued to define RACT for a particular source category. EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

The following sources in the Western Virginia Emissions Control Area have been identified as sources subject to the RACT requirements: (1) Roanoke Electric Steel Corporation Steel Mini-Mill located in the City of Roanoke, (2) Roanoke Cement Company Portland Manufacturing Plant located in Troutville, County of Botetourt; (3) Norfolk Southern Railway Company—East End Shops located in the City of Roanoke; and (4) Global Stone Chemstone Corporation located in Frederick County.

II. Summary of the SIP Revisions

On January 31, February 3, 7, and 14, 2005, VADEQ submitted revisions to the Virginia SIP which establish and impose RACT for four sources of NO_X. The Commonwealth's submittals consist of permits to operate which impose NO_X RACT requirements for each source.

Copies of the actual permits to operate imposing RACT and VADEQ's evaluation memoranda are included in the electronic and hard copy docket for this final rule. As previously stated, all documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

The table below identifies the sources and the individual permits to operate which are the subject of this rulemaking.

WESTERN VIRGINIA EMISSIONS CONTROL AREA—NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	Location	Permit/order or registration number	Source type	"Major source" pollutant
Roanoke Electric Steel Corporation	City of Roanoke	Registration No. 20131	Steel mill	NO_X
Roanoke Cement Company	Troutville, County of Botetourt.	Registration No. 20232	Cement kiln	NO_X
Norfolk Southern Railway Company—East End Shops.	City of Roanoke	Registration No. 20468	Rail car and locomotive maintenance.	NO_X
Global Stone Chemstone Corporation—Winchester Facility.	Clear Brook, Frederick County.	Registration No. 80504	Lime manufacturing	NO_X

III. EPA's Evaluation of the SIP Revisions

EPA is approving these RACT SIP submittals because VADEQ established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT. The Commonwealth has also imposed record-keeping, monitoring and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver

for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Final Action

EPA is approving the revisions to the Virginia SIP submitted by VADEQ to establish and require NO_X RACT for four major sources. These SIP revisions are necessary to implement the Early Action Compact Plan for the Roanoke and the Northern Shenandoah Valley Ozone Early Action Compact Plan. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 27, 2005, without further notice unless EPA receives adverse comment by May 27, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for four named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 27, 2005. Filing a petition for reconsideration by the Administrator of this final rule approving source-specific RACT requirements for four sources in the Commonwealth of Virginia does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 19, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (d) is amended by adding entries for Roanoke Electric Steel Corp., Roanoke Cement Company, Norfolk Southern Railway Company—East End Shops and Global Stone Chemstone Corporation at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* * *	*	*	*	*
Roanoke Electric Steel Corp.	Registration No. 20131	December 22, 2004	April 27, 2005 [Insert page number where the document begins]	52.2420(d)(7)
Roanoke Cement Company	Registration No. 20131	December 22, 2004	April 27, 2005 [Insert page number where the document begins]	52.2420(d)(7)
Norfolk Southern Railway Company—East End Shops	Registration No. 20468	December 22, 2004	April 27, 2005 [Insert page number where the document begins]	52.2420(d)(7)
Global Stone Chemstone Corporation	Registration No. 80504	February 9, 2005	April 27, 2005 [Insert page number where the document begins]	52.2420(d)(7)

[FR Doc. 05–8441 Filed 4–26–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–VA–0002; FRL–7904–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision Establishing the Western Virginia VOC and NO_X Emissions Control Area, and Providing the Enabling Authority for NO_X RACT Determinations in the Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Virginia State Implementation Plan (SIP) establishing a new volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions control area. This new area, entitled, the Western Virginia Emissions Control Area, consists of the City of Winchester and Frederick County, Roanoke County, Botetourt County, Roanoke City, and Salem City. EPA is also approving a revision to provide the enabling authority to implement NO_X Reasonably Available Control Technology (RACT) in the affected areas. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on June 27, 2005 without further notice, unless EPA receives adverse written comment by May 27, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0002 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *campbell.dave@epa.gov.*

D. Mail: R03–OAR–2005–VA–0002, David Campbell, Chief, Air Quality Planning Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–VA–0002 EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Prior to the final establishment of the 8-hour ozone nonattainment areas, EPA developed a program to allow potential nonattainment areas to voluntarily adopt local emission control programs to avoid air quality violations and mandated nonattainment area controls. Areas with air quality meeting the one-hour ozone standard were eligible to participate. In order to participate, state and local governments and EPA had to develop and sign an Early Action Compact (EAC) agreement with EPA. This agreement outlined the implementation procedures for the EAC program. As part of the EAC process, state and local communities are required to adopt and implement measures to reduce ozone precursor pollutants. In addition, the EAC program requires the preparation of an attainment demonstration.

Several localities in the Winchester and Roanoke areas of Virginia were eligible to participate in the EAC program. The areas that signed an EAC are the City of Winchester and Frederick County, which comprise the Northern Shenandoah Valley EAC, and the cities of Roanoke and Salem, and the counties of Roanoke and Botetourt, which comprise the Roanoke EAC.

In order to support this effort, the Commonwealth has elected to expand its pre-existing list of emission control areas to include the EAC participating localities and to expand its NO_X RACT regulation to the new emission control area.

II. Summary of SIP Revision

On December 22, 2004, and supplemented on February 24, 2005, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision amends the Virginia Code at 9 VAC 5–20–206 to expand the VOC and NO_X emission control areas to include the Western Virginia Emissions Control Area. This area includes the counties of Botetourt, Frederick, and Roanoke, and the cities of Roanoke, Salem, and Winchester. The revision also authorizes the implementation of NO_X RACT in the Western Virginia Emissions Control Area.

This SIP revision also includes several amendments to various

regulations in 9 VAC 5–40 which are intended to clarify certain provisions. A more detailed summary of the changes may be found in the technical support document (TSD) prepared for this rulemaking.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law,Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its [*] program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving a revision to the Commonwealth of Virginia SIP consisting of a regulation establishing the Western Virginia Emissions Control Area, and providing the enabling authority for NO_X RACT determinations in the affected areas. The regulations are necessary in order to implement the control measures and achieve the emission reductions in the plans for the Roanoke and Northern Shenandoah Valley EAC areas.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 27, 2005 without further notice unless EPA receives adverse comment by May 27, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 27, 2005. Filing a petition for reconsideration by the Administrator of this final rule approving the expansion of the VOC emission standards to the Western Virginia Emissions Control Area, and providing the enabling authority for NO_X RACT determinations in the affected areas, does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 19, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Chapter 20 and Chapter 40 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) *EPA approved regulations and statutes.*

EPA-APPROVED REGULATIONS AND STATUTES IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 20 General Provisions (Part II)				
*	*	*	*	*
5–20–206	Volatile Organic Compound and Nitrogen Oxides Emissions Control Areas.	3/24/04	4/27/05 [Insert page number where the document begins].	
*	*	*	*	*
Chapter 40 Existing Stationary Sources				
*	*	*	*	*
Part II Emission Standards				
*	*	*	*	*
Article 4 General Process Operations (Rule 4–4)				
5–40–240	Applicability and Designation of Affected Facility.	3/24/04	4/27/05 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS AND STATUTES IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* *	*	*	* *	*
5–40–310A–E	Standard for Nitrogen Oxides	3/24/04	4/27/05 [Insert page number where the document begins].	
* *	*	*	* *	*
Article 37 Petroleum Liquid Storage and Transfer Operations (Rule 4–3)				
5–40–5200	Applicability and Designation of Affected Facility.	3/24/04	4/27/05 [Insert page number where the document begins].	
* *	*	*	* *	*
5–40–5220	Standard for Volatile Organic Compounds.	3/24/04	4/27/05 [Insert page number where the document begins].	

* * * * *

[FR Doc. 05–8437 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0080; FRL–7709–2]

Benoxacor; Partial Grant and Partial Denial of Petition, and Amendment of Tolerance to Include S-Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting, in part, and denying, in part, pesticide petition 7E3489 submitted by Syngenta Crop Protection, Inc., and is amending the tolerance for benoxacor at 40 CFR 180.460 to include a reference to S-metolachlor, in addition to the existing reference to metolachlor. EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3) in the **Federal Register** of August 3, 2003 (68 FR 46620) (FRL–7317–6) announcing the filing of a petition requesting that the tolerance expression for the inert ingredient benoxacor (safener) in 40 CFR 180.460 be amended to remove references to metolachlor and replace it with references to S-metoloachlor. Although EPA finds it is safe to add a reference to S-metolachlor to this tolerance regulation, EPA does not agree that grounds exist to remove the reference to metolachlor. Thus, EPA is granting Syngenta's petition in as far as it seeks to add the reference to S-metolachlor but is denying the request to remove metolachlor.

DATES: This regulation is effective April 27, 2005. Objections and requests for hearings must be received on or before June 27, 2005.

ADDRESSES: To submit a written objection or hearing request, follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0080. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of August 6, 2003 (68 FR 46620) (FRL–7317–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petition (7E3489) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that the tolerance expression for the inert ingredient benoxacor (safener) in 40 CFR 180.460

be amended to remove the references to metolachlor and replace it with references to S-metolachlor. Currently, the benoxacor tolerance permits residues of benoxacor in or on raw agricultural commodities for which tolerances have been established for the herbicide metolachlor when benoxacor is used in pesticide formulations containing metolachlor. Syngenta's petition seeks this amendment because it has voluntarily canceled all its metolachlor product registrations, including its metolachlor registrations containing the safener benoxacor, and has registered products containing S-metolachlor in their place. Some or all of these new registrations contain not only S-metolachlor but benoxacor as well.

The notice of filing included a summary of Syngenta's petition. EPA received one comment, which is discussed further in Unit IV.

This final rule is issued pursuant to section 408(d) of FFDCA, as amended by the FQPA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

III. What Action is the Agency Taking?

In this action, EPA is ruling on a petition (7E3489) filed by Syngenta Crop Protection pursuant to FFDCA section 408(d) to amend a tolerance regulation. Section 408(d)(4) authorizes EPA to act on a petition by issuing a final rule adopting the amendment sought by the petition, issuing a final rule that varies from the amendment sought by the petition, or completely denying the petition. For the reasons described below, EPA has chosen the middle course with regard to Syngenta's petition - granting it only in part and denying the remainder.

The Agency is granting Syngenta's petition in part. The Agency has determined that the tolerance for benoxacor at 40 CFR 180.460 should be amended to include a reference to both metolachlor and S-metolachlor. EPA agrees there are sufficient grounds to amend the tolerance expression for benoxacor to include a reference to S-metolachlor, the product Syngenta is now marketing in place of the metolachlor registrations it has voluntarily canceled. EPA has previously determined that the existing benoxacor tolerances meet the safety standard of FFDCA section 408(b)(2)(A)(i). See the **Federal Register** of February 13, 1998, (63 FR 7299) (FRL–5771–1).

A chronic dietary exposure and risk assessment was conducted using Dietary Exposure Evaluation Model-Food Commodity Intake Database (DEEM-FCID™), which uses food consumption data from the United States Department of Agriculture's (USDA's) Continuing Surveys of Food Intakes by Individuals (CSFII) from 1994–1996 and 1998. The chronic analysis assumes tolerance-level residues on all crops with established, pending, or proposed tolerances for metolachlor and/or S-metolachlor. The analysis also assumes that 100% of the crops included in the assessment were treated with metolachlor and/or S-metolachlor and its safener, benoxacor. These assumptions result in over estimates of exposure and are, therefore, highly conservative with respect to dietary risk assessment. Even with these assumptions, the dietary risk estimates for all population subgroups are less than 15% of the chronic Population-Adjusted Dose (cPAD). Generally EPA is concerned when risk estimates exceed 100% of the cPAD. Therefore, the dietary risk estimates are below EPA's level of concern for all population subgroups, including those of infants and children. There are no acute toxicological or cancer concerns for benoxacor.

Accordingly, EPA finds for the reasons set forth in the **Federal Register** notice of February 13, 1998 (63 FR 7299), establishing the existing benoxacor tolerances, that these tolerances, as amended today, are safe for the general population, including infants and children, within the meaning of FFDCA section 408(b)(2)(A)(i).

EPA does not agree, however, that grounds exist to remove the reference to metolachlor in 40 CFR 180.460 as requested by the petition. As noted, EPA has found previously that residues of benoxacor resulting from its use with metolachlor, are safe and will be safe under the regulation when amended to also reference S-metolachlor. Further, while Syngenta may have canceled its metolachlor registrations, there are existing metolachlor registrations currently held by other persons. The fact that one registrant of several has chosen to stop marketing the pesticide does not constitute the ''abandonment'' of a pesticide as contemplated by 40 CFR 180.32(b) that would justify the administrative amendment or repeal of a tolerance. Further, as the commenter has made clear, existing metolachlor registrants are interested in retaining the reference to metolachlor in the benoxacor tolerance expression. For these reasons, EPA is denying Syngenta's request to remove metolachlor from the existing tolerance expression.

Based on its decision to grant, in part, and deny, in part, Syngenta's petition, EPA is today amending the tolerance expression for benoxacor at 40 CFR 180.460(a) as found in the regulatory section of this document.

IV. Public Comments

As noted in Unit.II. of this document, EPA received a comment objecting to Syngenta's petition to replace the references to metolachlor in 40 CFR 180.460 with references to S-metolachlor. Specifically, the commenter argues that the proposed amendment is unnecessary to protect public health; that it would establish an inappropriate precedent prior to the adoption of an isomer active ingredient policy; and that the rationale for action that Syngenta has offered is materially incomplete and inadequate. Because EPA has decided for reasons set forth in Unit.III. of this document to retain the references to metolachlor in 40 CFR 180.460, EPA need not reach the commenter's arguments objecting to Syngenta's proposed deletion of metolachlor from that regulation. The commenter also argues, however, that as a general matter Syngenta's petition provides no pertinent new ''data, information and arguments'' or ''reasonable grounds'' in support of the petition. EPA disagrees with this comment to the extent it suggests there are inadequate grounds for adding references to S-metolachlor to the tolerance expression at 40 CFR 180.460. As discussed above, the petition noted that EPA has previously found that benoxacor residues are safe and has determined that this action will not alter the assumptions upon which that determination relied. Accordingly, EPA believes reasonable grounds exist to add references to S-metolachlor to 40 CFR 180.460.

V. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests

for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0080 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 27, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0080, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with*

Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 14, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.460 paragraph (a) is revised to read as follows:

§ 180.460 Benoxacor; tolerances for residues.

(a) *General.* Tolerances are established for residues of the inert ingredient (safener) benoxacor (4-(dichloroacetyl)-3,4-dihydro-3-methyl-2H-1, 4-benzoxazine) at 0.01 parts per million (ppm) when used in pesticide formulations containing metolachlor or S-metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor or S-metolachlor.

* * * * *

[FR Doc. 05–8119 Filed 4–26–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0046; FRL–7705–1]

Spiromesifen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for: Primary crops for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents; rotational crops for the inadvertent or indirect combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), and its metabolites containing the 4-hydroxymethyl moiety (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents; and livestock commodities for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), and its metabolites containing the enol (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one) and 4-hydroxymethyl (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one) moieties, calculated as the parent compound equivalents. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective April 27, 2005. Objections and requests for hearings must be received on or before June 27, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0046. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Thomas Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9423; e-mail address: *harris.thomas@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at*http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of July 28, 2004 (69 FR 45047) (FRL–7366–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6537) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for the combined residues of the insecticide/miticide:

1. Spiromesifen; butanoic acid, 3,3-dimethyl-, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl ester [subsequently referred to as (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one)] in or on strawberry at 2.0 parts per million (ppm); vegetable, tuberous and corm, crop subgroup 1C, at 0.01 ppm (subsequently revised to 0.02 ppm); vegetable, leafy greens (except Brassica), crop subgroup 4A at 10 ppm (subsequently revised to vegetable, leafy greens, subgroup 4A at 12 ppm); vegetable, Brassica, head and stem, crop subgroup 5A, at 2.0 ppm; vegetable, Brassica, leafy, crop subgroup 5B at 12 ppm; vegetable, fruiting, crop group 8, at 0.30 ppm; tomato, paste at 0.60 ppm; vegetable, cucurbit, crop group 9, at 0.10 ppm; corn, field, grain, at 0.01 ppm (subsequently revised to 0.02 ppm); corn, field, forage, at 3.0 ppm; corn, field, stover, at 5.0 ppm; cotton (subsequently defined as cotton, undelinted seed) at 0.50 ppm; and cotton, gin byproducts, at 15 ppm.

2. Spiromesifen; butanoic acid, 3,3-dimethyl-, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl ester [subsequently referred to as (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), and its metabolites containing the 4-hydroxymethyl moiety (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one)] in or on the rotational crop commodities alfalfa, forage, at 1.5 ppm; alfalfa, hay, at 3.0 ppm; wheat, grain, at 0.01 ppm (subsequently revised to 0.03 ppm); wheat, forage, at 0.20 ppm; wheat, hay, at 0.15 ppm; wheat, straw, at 0.25 ppm; wheat, bran, at 0.05 ppm (subsequently combined with wheat, shorts and defined together as ''wheat milled byproducts'' with no tolerance required); wheat, shorts, at 0.03 ppm (subsequently combined with wheat, bran and defined together as ''wheat milled byproducts'' with no tolerance required); barley, grain, at 0.02 ppm (subsequently revised to 0.03 ppm); barley, hay, at 0.25 ppm; barley, straw, at 0.25 ppm (subsequently revised to 0.15 ppm); beet, sugar, tops, at 0.20 ppm; beet, sugar, roots, at 0.02 ppm (subsequently revised to 0.03 ppm); and beet, sugar, molasses, at 0.05 ppm (tolerance subsequently not required).

3. Spiromesifen; butanoic acid, 3,3-dimethyl-, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl ester [subsequently referred to as 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), and its metabolites containing the enol (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one) and 4-hydroxymethyl (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one) moieties)] in or on the raw agricultural commodities cattle, fat, at 0.05 ppm; cattle, meat byproducts, at 0.05 ppm; milk at 0.01 ppm (tolerance subsequently not required); and milk, fat, at 0.03 ppm (subsequently revised to 0.10 ppm).

Following the review of all data, tolerances are also required for the following commodities: Goat, fat at 0.05 ppm; goat meat byproducts at 0.05 ppm; sheep, fat at 0.05 ppm; sheep, meat byproducts at 0.05 ppm; horse, fat at 0.05 ppm; and horse, meat byproducts at 0.05 ppm.

That notice included a summary of the petition prepared by Bayer CropScience, the registrant. A comment was received from a private citizen who challenged the value of using animal testing for evaluating pesticide toxicity and questioned the data gaps related to the tolerance proposal process. This commenter's objections have been addressed in prior rulemaking documents. See (69 FR 63083, 63096) (October 29, 2004).

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for the combined residues of spiromesifen on the crops and animal commodities listed above.

EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by spiromesifen are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3050	28–Day oral toxicity (mouse)	NOAEL was not established LOAEL (M/F) = 202.6/269.6 mg/kg/day based on decreased body weight gain
870.3050	28–Day oral toxicity (mouse)	NOAEL was not established LOAEL (M/F) = 444.3 mg/kg/day based on decreased body weight gain and increase in alkaline phosphatase
870.3100	28–Day oral toxicity (rat)	NOAEL = 53.4 mg/kg/day LOAEL = 536.3 mg/kg/day based on clinical signs (piloerection, reduced motility, spastic gait, discolored feces and increased reactivity when touched), decrease in body weight gain, and food consumption, hematology (thromboplastin time increase), clinical chemistry (increased aspartateaminotransferase and alanine aminotransferase), liver enzyme (increased aldrin expoxidase and epoxide hydrolase), increased spleen and lymph node cell proliferation, organ-weights (increase brain, heartand kidneys, decrease in weights in the ovaries, spleen and thymus), gross pathology (thin appearance, discolored adrenal glands and white mucous in the duodenum and jejunum), and microscopic findings (vacuolation of the superficial mucosal cells in the jejunum and duodenum, increased follicular cell hypertrophy in the thyroid, indistinct corticomedullary junction in the thymus and cytoplasmic changes in the adrenal glands)
870.3150	90–Day oral toxicity (nonrodent)	NOAEL = 9.2 mg/kg/day LOAEL = 71 mg/kg/day (HDT) based on clinical chemistry(increased ALP) and liver histopathology
870.3150	90–Day oral toxicity (nonrodent)	NOAEL was not established LOAEL = 98.4 mg/kg/day (HDT) based on increase in alkalinephosphatase and liver histopathology (cytoplasmic changes)
870.3150	90–Day oral toxicity (rat)	NOAEL (M/F) = 31.7/7.7 mg/kg/day. LOAEL (F) = 36.6 mg/kg/day based on thyroid effects (increased thyroid stimulating hormone, thyroxine binding capacity and thyroid follicular cell hypertrophy), kidney effects (mineralization), and liver effect (increased ALP) LOAEL (M) = 204.0 mg/kg/day based on thyroid effect (colloidal alteration, follicular cell hypertrophy, decreased T_3 and T_4 and increased TBC and TSH), kidney effects (Hyalin droplets), and liver effects (increase in ALP and ALAT)
870.3200	21/28–Day dermal toxicity (rat)	NOAEL = 1,000 mg/kg/day (HDT) LOAEL was not established
870.3465	5–Day inhalation toxicity (rat)	NOAEL = 20.7 mg/kg/day LOAEL = 134.2 mg/kg/day based onthe clinical signs (tremors, clonic-tonic convulsions, reduced activity,bradypnea, labored breathing,vocalization, avoidance reaction,giddiness, piloerection, limp,emaciation, cyanosis, squattedposture, apathy, and salivation), andgross pathology (dark red areas orfoci in the lungs, bloated stomachsand pale liver)
870.3465	30–Day inhalation toxicity (rat)	NOAEL >21.1 mg/kg/day LOAEL was not established
870.3700	Prenatal developmental (rat)	Maternal NOAEL = 10 mg/kg/day Maternal LOAEL = 70 mg/kg/daybased on decreased body weight gainand reduced food consumption. Developmental NOAEL ≥ 500mg/kg/day (HDT) Developmental LOAEL > 500 mg/kg day
870.3700	Prenatal developmental (nonrodent)	Maternal NOAEL = 5 mg/kg/day Maternal LOAEL = 35 mg/kg/day based on body weight loss and reduced food consumption Developmental NOAEL ≥ 250 mg/kg/day Developmental LOAEL > 250 mg/kg/day

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects (rat)	Parental/Systemic NOAEL (M/F) = 2.2/3.8 mg/kg/day Parental/Systemic LOAEL (M/F) = 8.8/13.2 mg/kg/day based on significantly decreased spleen weight (absolute and relative in parental females and F_1 males) and significantly decreased growing ovarian follicles in females Reproductive NOAEL (M/F) = 37/64 mg/kg/day (HDT) Reproductive LOAEL = Not established Offspring NOAEL = 2.2 mg/kg/day Offspring LOAEL = 8.8 mg/kg/day based on pup body weight decrements during lactation
870.4100	Chronic toxicity (rat)	NOAEL (M/F) = 15.9/19.3 mg/kg/day LOAEL (M/F) = 42.4/51.7 mg/kg/day based on increase in T3 hormone in males, gross pathology (enlarged liver in males, dilated uterus and discolored adrenal gland in females) and histopathology (adrenal cytoplasmic eosinophilia, metritise, thyroid colloidal alteration in female and thyroid follicular cell hypertrophy in both males and females)
870.4100	Chronic toxicity (non-rodent)	NOAEL (M/F) = 11.5/10.8 mg/kg/day LOAEL (M/F) = 109/117 mg/kg/day based on increase in alkaline phosphatase and liver histopathology (cytoplasmic changes, inclusions and vacuoles)
870.4200	Carcinogenicity (rat)	NOAEL (M/F) = 14.8/19.5 mg/kg/day LOAEL (M/F) = 40.0/53.5 mg/kg/day based on clinical signs (palpable masses, vaginal bleeding and pallor), gross necropsy (discolored area in the lungs, nodules/dilation of uterus) and hispathology (osseus metaplasia and granulomatous inflammation of the lungs in the males, liver necrosis; endometritis/metritis, endometrial hyperplasia of the cervix uteria and colloidal alteration of the thyroid gland in females) and increased TSH in females. No evidence of carcinogenicity
870.4200	Carcinogenicity (mouse)	NOAEL (M/F) = 3.3/3.8 mg/kg/day LOAEL (M/F) = 22/30 mg/kg/day based on gross (enlarged adrenal gland in males) and microscopic changes (cytoplamic eosinophilia, ceroid deposits, and diffuse fatty changes of the adrenal cortex and pancreatic amyloidosis in both sexes) No evidence of carcinogenicity
870.5100	Gene mutation--*In Vitro* bacteria	Negative
870.5300	Cytogenetics *In Vitro* Mammalian Gene Mutation	Negative
870.5375	Cytogenetics--*In Vitro* Mammalian	Negative
870.5395	Cytogenetics *In Vivo* Mammalian Micronucleus (mouse)	Negative
870.6200	Acute neurotoxicity screening battery	NOAEL = 2,000 mg/kg/day LOAEL = Not established
870.6200	Subchronic neurotoxicity screening battery	NOAEL (M/F) = 31.8/38.3 mg/kg/day. LOAEL (M/F) = 122.7/149.3 mg/kg/day based on decreased body weight gain and food consumption.
870.7485	Metabolism and pharmacokinetics (rat)	Spiromesifen exhibits moderate absorption (approximately 43%), relatively rapid excretion primarily via the urine and feces. Approximately 39% of the administered dose was excreted in the urine and 55 to 57% in the feces with 88 to 90% of the dose being eliminated within the first 24 hours. Maximum concentration in the blood achieved within 1 to 6 hours post- dose depending upon the dose. Concentrations of residual radioactivity in the tissues were quite low at 72 hours post-dose. The test material was initially metabolized to the keto-enol by loss of the dimethylbutyric acid moiety. Both the phenyl and cyclopentyl rings were hydoxylated and the methyl groups on the phenyl ring were ultimately oxidized to a carboxylic acid. These metabolites were largely recovered in the bile and urine. The predominate moiety recovered in the feces was the unmetabolized test material.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7600	Dermal penetration (non-rodent)	Intravenous injection resulted in excretion of the radiolabel mainly via urine: Urine (54.32%), feces (13.08%), and cage debris/rinse (26.57%). Excretion was rapid in that 70% of the dose was excreted within 24 hours. Dermal application of spiromesifen resulted in limited absorption after 8–hour exposure (3.3%), which a large portion was recovered from urine and cage debris/rinse showing that it is poorly absorbed through the skin layers.
870.7800	4–Week immunotoxicity (rat)	NOAEL (M/F) = 52.8/45.7 mg/kg/day LOAEL (M/F) = 291.6/288.6 mg/kg/day based on mortality, clinical signs and decreased body weights, body weight gains and food consumption.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors;'' the ''special FQPA safety factor;'' and the ''default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''special FQPA safety factor'' refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for spiromesifen used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SPIROMESIFEN FOR USE IN HUMAN RISK ASSESSMENT

1Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effect
Acute dietary (females 13-49 years of age)	Not applicable	None	An endpoint of concern attributable to a single dose was not identified. An aRfD was not established.
Acute dietary (general population)			

TABLE 2.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SPIROMESIFEN FOR USE IN HUMAN RISK ASSESSMENT—Continued

1Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effect
Chronic dietary (all populations)	NOAEL= 2.2 mg/kg/day UF = 100X Chronic RfD = 0.022 mg/kg/day	Special FQPA SF = 1X	2–generation reproduction study in rats. The parental systemic LOAEL: 13.2 mg/kg/day based on significantly decreased spleen weight (absolute and relative in parental females and F_1 males) and significantly decreased growing ovarian follicles in females.
Cancer (oral, dermal, inhalation)	Classification: ''Not likely to be carcinogenic to humans.''		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. No tolerances have previously been established for spiromesifen. Risk assessments were conducted by EPA to assess dietary exposures from spiromesifen in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Acute dietary exposure limits for all populations, including infants and children, were not performed because an endpoint of concern attributable to a single exposure (dose) was not identified from the oral toxicity studies.

ii. *Chronic exposure*. In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) and the Lifeline™ model version 2.0, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. Percent crop treated and anticipated residues were not used.

An unrefined, Tier 1 chronic dietary exposure assessment was conducted using the following:

a. Recommended tolerances for all plant and livestock except the leafy-green and leafy-Brassica vegetable subgroups;

b. EPA calculated residues of concern (parent and metabolites) for the leafy-green and leafy-Brassica vegetable subgroups;

c. 100% crop treated (CT) information for all proposed uses; and

d. Default processing factors for all commodities.

The metabolism studies show that the hydroxymethyl metabolite is formed along with the enol metabolite in the leafy-green and leafy-Brassica vegetable subgroups. EPA determined that these two metabolites along with the spiromesifen should be included in the chronic dietary risk assessment for these crops. Residue data are unavailable for the 4-hydroxymethyl metabolite; to account for this metabolite in the risk assessment, the recommended tolerance levels for these crops was multiplied by a correction factor of 1.3x, where:

1.3 = Metabolites in Risk Assessment (ppm)/Metabolites in Tolerance Expression (ppm).

The dietary-exposure assessment was conducted for the general U.S. population and various population subgroups. This assessment concludes that the chronic dietary exposure estimates are below EPA's level of concern (<100% cPAD) for the general U.S. population (27% cPAD and 29% cPAD, based on the Lifeline™ and DEEM-FCID™ analyses, respectively) and all population subgroups. Both Lifeline™ and DEEM-FCID™ estimate that children 3 to 5 years old are the most highly-exposed subpopulation with risks of 30% cPAD and 37% cPAD, respectively.

iii. *Cancer*. A cancer exposure assessment was not performed because spiromesifen is classified as ''not likely to be carcinogenic to humans.''

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for spiromesifen in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of spiromesifen.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of

comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to spiromesifen they are further discussed in the aggregate risk sections in Unit E.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of spiromesifen for acute exposures are estimated to be 7.1 parts per billion (ppb) for surface water and 0.005 ppb for ground water. The EECs for chronic exposures are estimated to be 0.70 ppb for surface water and 0.005 ppb for ground water.

EECs of spiromesifen and its metabolites for acute exposures are estimated to be 26 ppb for surface water and 28 ppb for ground water. The EECs for chronic exposures are estimated to be 11 ppb for surface water and 28 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Spiromesifen is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to spiromesifen and any other substances and spiromesifen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that spiromesifen has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There was no evidence of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to spiromesifen. In a rat developmental toxicity study, no developmental toxicity was observed at doses up to 500 mg/kg/day (the highest dose tested) in the presence of maternal toxicity. The rat maternal LOAEL was determined to be 70 mg/kg/day based on decreased body-weight gain and reduced food consumption. In the rabbit developmental toxicity study, there was no developmental toxicity observed at doses up to 250 mg/kg/day (the highest dose tested), but the maternal LOAEL was determined to be 35 mg/kg/day based on body weight loss and reduced food consumption. There is no qualitative and/or quantitative evidence of increased susceptibility to spiromesifen following pre/postnatal exposure in a 2–generation reproduction study in rats.

There is no concern for developmental neurotoxicity resulting from exposure to spiromesifen. Neurotoxic effects such as reduced motility, spastic gait, increased reactivity, tremors, clonic-tonic convulsions, reduced activity, labored breathing, vocalization, avoidance reaction, piloerection, limp, cyanosis, squatted posture, and salivation were observed in two studies (5–day inhalation and subchronic oral rat). However, these effects were considered as secondary, not neurotoxic, effects due to the high dosage. There was no evidence of neurotoxicity in the acute or subchronic neurotoxicity or any other studies.

3. *Conclusion*. For spiromesifen, EPA determined that the 10X safety factor to protect infants and children should be removed. A 1X safety factor is appropriate because:

- There is a complete toxicity data base for spiromesifen.
- There is no evidence of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to spiromesifen. In the prenatal developmental toxicity studies in rats and rabbits and in the 2–generation reproduction study in rats, developmental toxicity to the offspring occurred at equivalent or higher doses than maternal toxicity.
- There are no neurotoxicity concerns based on acute and subchronic neurotoxicity studies.
- The dietary food exposure assessment uses proposed tolerance levels or higher residues and assumed 100% crop-treated (CT) information for all commodities. By using these screening-level assessments, chronic exposures and risks will not be underestimated. The ''higher residues'' are those that were calculated using a modifying factor to account for the lack of spiromesifen-4-hydroxymethyl residue data.
- The dietary drinking water assessment (Tier 2 estimates) uses values generated by model and associated modeling parameters which are designed to provide conservative, health protective, and high-end estimates of water concentrations.
- Residential exposure is not expected--spiromesifen will be registered for agricultural and greenhouse/ornamental uses only.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average

food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Spiromesifen is not expected to pose an acute risk because an endpoint of concern attributable to a single exposure (dose) was not identified from the oral toxicity studies.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure and the EECs from DEEM-FCID™ as these were slightly higher, and thus are more conservative, than the Lifeline™ estimates, EPA has concluded that exposure to spiromesifen from food will utilize 29% of the cPAD for the U.S. population, 15% of the cPAD for all infants less than 1 year old, and 37% of the cPAD for children 3-5 years old. There are no residential uses for spiromesifen that result in chronic residential exposure to spiromesifen. There is no concern regarding spiromesifen in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO SPIROMESIFEN + METABOLITES

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)[1]	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.022	29	11	28	545
All Infants (<1 year old)	0.022	15	11	28	187
Children (1-2 years old)	0.022	35	11	28	142
Children (3-5 years old)	0.002	37	11	28	138
Children (6-12 years old)	0.022	30	11	28	155
Youth (13-19 years old)	0.022	25	11	28	492
Adults (20-49 years old)	0.022	29	11	28	544
Adults (50 + years old)	0.022	29	11	28	470
Females (13-49 years old)	0.022	30	11	28	539

[1]Based on exposure estimates from DEEM-FCID

3. Spiromesifen is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. Spiromesifen is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Spiromesifen is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to spiromesifen residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical enforcement methodologies, liquid chromatography LC)/mass spectrometry (MS)/MS, exist and have been successfully validated by independent laboratories.

B. International Residue Limits

There are no international residue limits for spiromesifen listed in CODEX.

V. Conclusion

Therefore, the tolerance is established for:

1. Primary crops for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents in or on strawberries at 2.0 parts per million (ppm); vegetable, tuberous and corm, subgroup 1C at 0.02 ppm; vegetable, leafy greens, subgroup 4A at 12 ppm; vegetable, Brassica, head and stem, subgroup 5A at 2.0 ppm; vegetable, Brassica, leafy greens, subgroup 5B at 12 ppm; vegetable, fruiting, group 8 at 0.30 ppm; tomato, paste at 0.60 ppm; vegetable, cucurbit, group 9 at 0.10 ppm; corn, field, grain at 0.02 ppm; corn, field, forage at 3.0 ppm; corn, field, stover at 5.0 ppm; cotton,

undelinted seed at 0.50 ppm; and cotton, gin byproducts at 15 ppm.

2. Rotational crops for the inadvertent or indirect combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), and its metabolites containing the 4-hydroxymethyl moiety (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents in or on alfalfa, forage at 1.5 ppm; alfalfa, hay at 3.0 ppm; wheat, grain at 0.03 ppm; wheat, forage at 0.20 ppm; wheat, hay at 0.15 ppm; wheat, straw at 0.25 ppm; barley, grain at 0.03 ppm; barley, hay at 0.25 ppm; barley, straw at 0.15 ppm; beet, sugar, tops at 0.20 ppm; and beet, sugar, roots at 0.03 ppm.

3. Livestock commodities for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), and its metabolites containing the enol (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one) and 4-hydroxymethyl (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one) moieties, calculated as the parent compound equivalents in or on cattle, fat at 0.05 ppm; cattle, meat byproducts at 0.05 ppm; milk, fat at 0.10 ppm; goat, fat at 0.05 ppm; goat, meat byproducts at 0.05 ppm; sheep, fat at 0.05 ppm; sheep, meat byproducts at 0.05 ppm; horse, fat at 0.05 ppm; and horse, meat byproducts at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0046 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 27, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0046, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require

Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 14, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.607 is added to read as follows:

§ 180.607 Spiromesifen; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents in or on the following primary crop commodities:

Commodity	Parts per million
Corn, field, forage	0.02
Corn, field, grain	3.0
Corn, field, stover	5.0
Cotton, gin byproducts	15
Cotton, undelinted seed	0.50
Strawberry	2.0
Tomato, paste	0.60
Vegetable, brassica, head and stem, subgroup 5A	2.0
Vegetable, brassica, leafy greens, subgroup 5B	12
Vegetable, cucurbit, group 9	0.10
Vegetable, fruiting, group 8	0.30
Vegetable, leafy greens, subgroup 4A	12
Vegetable, tuberous and corm, subgroup 1C	0.02

(2) Tolerances are established for the inadvertent or indirect combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1- oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), and its metabolites containing the 4-hydroxymethyl moiety (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents in the following rotational crop commodities:

Commodity	Parts per million
Alfalfa, forage	1.5
Alfalfa, hay	3.0
Barley, grain	0.03
Barley, hay	0.25
Barley, straw	0.15
Beet, sugar, roots	0.20
Beet, sugar, tops	0.03
Wheat, forage	0.03
Wheat, grain	0.20
Wheat, hay	0.15
Wheat, straw	0.25

(3) Tolerances are established for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), and its metabolites containing the enol (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one) and 4-hydroxymethyl (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one) moieties, calculated as the parent compound equivalents in the following livestock commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat byproducts	0.05
Goat, fat	0.05
Goat, meat byproducts	0.05
Horse, fat	0.05
Horse, meat byproducts	0.05
Milk, fat	0.10
Sheep, fat	0.05

Commodity	Parts per million
Sheep, meat byproducts	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 05–8120 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0142; FRL–7710–9]

Trifluralin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of trifluralin in spearmint and peppermint oil under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The FQPA substantially rewrote section 408 of FFDCA. As a result, the revisions made it necessary, once again, to establish tolerances for mint oils that had previously been deemed unnecessary.

DATES: This regulation is effective April 27, 2005. Objections and requests for hearings must be received on or before June 27, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0142. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–8195; e-mail address: *pates.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

II. Background

In the **Federal Register** of November 24, 2004 (69 FR 68287) (FRL–7686–4), EPA on its own initiative, under section 408(e) of FFDCA, 21 U.S.C. 346a(e), announced a proposal to establish a permanent tolerance for residues of the herbicide trifluralin in spearmint and peppermint oil at 2.0 parts per million (ppm). The proposal included a summary of the exposure assessment prepared by the Agency. The Agency received three submissions for comment; two from private citizens and one from Dow AgroSciences, the registrant.

III. Response to Comments

Comments received from the registrant address the following areas: evidence of errors and inconsistencies/miscalculations, belief that potential risks are significantly overstated, belief that unrealistic assumptions have been made, and the position that relevant information has been omitted and not incorporated into the Agency's decision(s). Additionally, the registrant has asked for clarification on labeling requirements. However, in general, the registrant does agree with the assessments that have been conducted for the human health and residue chemistry risk studies available for trifluralin. Furthermore, the registrant does not state any objections to the establishment of a permanent tolerance for residues of the herbicide trifluralin in peppermint and spearmint oil at 2.0 ppm.

One of the private citizen's comments raised objections to any establishment of a tolerance for trifluralin. The citizen's comments and EPA's response to those comments follow:

1. *Comment.* Both 28–day dermal and developmental toxicity tests on rabbits as well as a 1–year oral capsule study on dogs have no validity and are abusive to the test animals.

EPA response. This commenter's objections to animal testing have been addressed in prior rulemaking documents. See 69 FR 63083, 63096 (October 29, 2004).

2. *Comment.* 1994 surveys of food intake are out of date.

EPA response. Consumption survey data is used in part to determine acute and chronic exposure. In assessing exposure to trifluralin, EPA relied on food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). These surveys are generally updated every 10 years or so.

The commenter claims the USDA surveys are out of date. The basis for this assertion is the commenter's observation that Americans are obese. This type of unsupported allegation is insufficient to call into question EPA's reliance on scientifically-designed studies. In any event, EPA's experience has been that while eating patterns change over time, these changes are generally marginal between surveys.

3. *Comment.* The DEEM software is not suitable for evaluating exposure/risk

EPA response. The commenter provides no basis for claiming that the DEEM is unsuitable for risk assessment. For this reason alone, the comment is insignificant. EPA would note, however, that the DEEM software has been thoroughly tested by the Agency and has been reviewed by an independent body of technical experts, the FIFRA Scientific Advisory Panel, and found to be suitable for evaluating risks of pesticide residues on food. The results of that review may be found at *http://www.epa.gov/scipoly/sap/2000/february/partialfinalreport06292000.pdf.*

4. *Comment.* Exposure to residential handlers makes the product too dangerous to be sold.

EPA response. The commenter states that if there are any exposures to residential handlers, then the product is far too dangerous to use or be sold. In response, EPA would first note that this tolerance rulemaking is being conducted under the FFDCA, and EPA does not regulate the sale or use of pesticides in residential settings under the FFDCA, although EPA does consider exposure from residential uses of pesticides in determining whether pesticide tolerances are safe. Decisions on whether a pesticide may be sold and distributed for residential uses is made pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. Based on its uses, trifluralin has been assessed under the FFDCA for the residential applicator as well as other potential contact sources. Residential exposure scenarios were developed based on the use sites, formulations, application rates, and the various other equipment that could be used during applications. Residential risk estimates are also based on estimates (and assumptions) regarding the body weight of a typical homeowner/applicator, the area treated per application, and the seasonal duration (in days) of exposure. It is also assumed that residential applicators complete all elements of an application (mix/load/apply) without use of protective equipment (assessments are based on an assumption that individuals will be wearing short-sleeved shirts and short pants). For short-term non-cancer risks to residential handlers, a margin of exposure (MOE) of less than 100 exceeds the Agency's level of concern. For residential handlers, calculations of short-term inhalation non-cancer risk indicate that the MOEs are greater than 100 for all residential handler scenarios. Likewise, residential handler cancer risk indicates that all scenarios are below the Agency's level of concern. Therefore, the Agency is confident that no unreasonable risk exists (excluding any misuse) based on the assumptions made, likely scenarios, and the conservative approach used in determining any potential risk problem for residential handlers.

Another private citizen objected to allowing this genetically-modified crop to become a legal use in the United States or anywhere else. The commenter argued that genetic modification of plants is an unknown danger to humans as well as a wide variety of other species. In response, EPA would note that the commenter is mistaken in concluding that the production of trifluralin involves genetic modification of plants.

IV. Conclusion

Based on the information, analysis, and conclusions in the November 24, 2004 (69 FR 68287) proposal, a tolerance is established for residues of trifluralin, alpha, alpha, alpha-trifluoro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine, in or on spearmint and peppermint oil at 2.0 ppm.

V. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0142 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 27, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit V.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0142, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-

mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA on EPA's own initiaive. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 20, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.207 is amended by adding alphabetically entries for ''peppermint oil,'' and ''spearmint oil'' to the table in paragraph (a). For the convenience of the reader the entire table to paragraph (a) is shown below.

§ 180.207 Trifluralin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Alfalfa, hay	0.2
Asparagus	0.05
Barley, hay	0.05
Barley, straw	0.05
Bean, mung, sprouts	2.0
Carrot, roots	1.0
Corn, field, forage	0.05
Corn, field, grain	0.05
Corn, field, stover	0.05

Commodity	Parts per million
Cotton, undelinted seed	0.05
Cress, upland	0.05
Flax, seed	0.05
Fruit, citrus, group 10	0.05
Fruit, stone, group 12	0.05
Grain, crop, except corn, sweet and rice grain	0.05
Grape	0.05
Hop	0.05
Legume, forage	0.05
Nut, tree, group 14	0.05
Peanut	0.05
Peppermint oil	2.0
Peppermint, tops	0.05
Rapeseed, seed	0.05
Safflower, seed	0.05
Sorghum, forage	0.05
Sorghum, grain, stover	0.05
Spearmint oil	2.0
Spearmint, tops	0.05
Sugarcane, cane	0.05
Sunflower, seed	0.05
Vegetable, cucurbit, group 9	0.05
Vegetable, fruiting, group 8	0.05
Vegetables, leafy	0.05
Vegetables, root (exc. carrots)	0.05
Vegetables, seed and pod	0.05
Wheat, grain	0.05
Wheat, straw	0.05

* * * * *

[FR Doc. 05–8384 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7903–7]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds ten new sites to the General Superfund Section of the NPL.

DATES: *Effective Date:* The effective date for this amendment to the NCP shall be May 27, 2005.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone (703) 603–8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases

into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutant or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property

boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii)The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund*.

II. Availability of Information to the Public

A. May I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''Quick Search,'' then key in the appropriate docket identification number; SFUND–2005–0002. (Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified below in section II D.)

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—April 2005.'' An electronic version is available at *http://www.epa.gov/edocket/* using the docket identification number SFUND–2005–0002.

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276.

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

John Wright, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; 404/562–8123.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6S–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–B, Denver, CO 80202–2466; 303/312–6463.

Jerelean Johnson, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972–3094.

Sylvia Kawabata, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–1078.

E. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following ten sites to the NPL; all to the General Superfund Section:

State	Site name	City/county
IL	Hegeler Zinc	Danville.
NC ..	Sigmon's Septic Tank Service.	Statesville.
NJ ...	Crown Vantage Landfill	Alexandria Township.
NY ...	Hopewell Precision Area Contamination.	Hopewell Junction.
OH ..	Copley Square Plaza ...	Copley.
PA ...	Price Battery	Hamburg.
PA ...	Safety Light Corporation.	Bloomsburg.
SC ...	Brewer Gold Mine	Jefferson.
TN ...	Smalley-Piper	Collierville.
VT ...	Commerce Street Plume.	Williston.

Three of the sites in this final rule received comments supporting listing, Safety Light Corporation, Price Battery and Brewer Gold. These sites were all proposed September 23, 2004 (69 FR 56970) with a 60-day comment period which ended on November 22, 2004. None of the comments affect the HRS score, and all support listing on the NPL. Additional contamination information and a request for a removal action were provided in comments for Safety Light Corporation and Brewer Gold Mine. The comment for Price Battery requested that the buildings be removed and asked about the impact of a listing on the sale of properties within the site. EPA will evaluate what, if any, remediation is needed, and the most appropriate response for the properties within the Price Battery site.

In addition to these comments supporting listing, one site in this rule received negative comments, Crown Vantage Landfill. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—April 2005.'' All other sites in this rule received no comments.

B. What Did EPA Do With the Public Comments It Received?

Out of the ten sites included in this final rule, EPA only received comments on the Crown Vantage Landfill site in Alexandria Township, NJ. EPA responded to all relevant comments received on this site and EPA's responses to the site-specific comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—April 2005.'' The comments and the support document are contained in the Headquarters Docket and are also listed in EPA's electronic public docket and comment system at *http://www.epa.gov/edocket/* using the SFUND–2005–0002 identification number.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substance depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

1. What Is Executive Order 13132 and Is It Applicable to This Final Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

H. Executive Order 13211

1. What Is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

2. Is This Rule Subject to Executive Order 13211?

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866 (See discussion of Executive Order 12866 above.)

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Possible Changes to the Effective Date of the Rule

1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section

804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 19, 2005.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	* * * * *	*	*
IL	Hegeler Zinc	Danville.	
*	* * * * *	*	*
NC	Sigmon's Septic Tank	Statesville.	
*	* * * * *	*	*
NJ	Crown Vantage Landfill	Alexandria Township.	
*	* * * * *	*	*
NY	Hopewell Precision Area Contamination	Hopewell Junction.	
*	* * * * *	*	*
OH	Copley Square Plaza	Copley.	
*	* * * * *	*	*
PA	Price Battery	Hamburg.	
*	* * * * *	*	*
PA	Safety Light Corporation	Bloomsburg.	
*	* * * * *	*	*
SC	Brewer Gold Mine	Jefferson.	
*	* * * * *	*	*
TN	Smalley-Piper	Collierville.	
*	* * * * *	*	*
VT	Commerce Street Plume	Williston.	
*	* * * * *	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤28.50).

C = Sites on Construction Completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).
* * * * *

[FR Doc. 05–8321 Filed 4–26–05; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[OMD Docket No. 04–251; FCC 04–163]

Amendment of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to clarify the responsibilities of the Managing Director with respect to financial management matters and with respect to implementation of the Commission's directives in a recent Order released October 3, 2003, concerning the administration of the Universal Service Fund (USF) and Telecommunications Relay Services Fund (TRS Fund). The rules adopted herein are intended to provide clear direction to the Managing Director to respond quickly and efficiently to matters concerning the proper accounting and reporting for the Commission's financial transactions and compliance with relevant and applicable federal financial management and reporting statutes. In addition, we amend our rules to authorize the Billing and Collection Agent for North American Numbering Plan Administration and the Administrators of the USF and the TRS Fund to issue FCC Registration Numbers for carriers who have not previously been assigned one.

DATES: Effective April 27, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Regina W. Dorsey, Special Assistant to the Chief Financial Officer, at 1–202–418–1993, or by e-mail at *Regina.Dorsey@fcc.gov.*

SUPPLEMENTARY INFORMATION: In the matter of the Commission's financial management matters and its administration of the issuance of FCC Registration Numbers. Amendment of sections 0.11, 0.231, and 1.8002 of the Commissions rules Adopted: July 2, 2004, Released: January 7, 2005.

The Commission will not send a copy of this Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the adopted rules relate to agency organization, procedure or practice that do not ''substantially affect the rights or obligations of non-agency parties. Pursuant to sections 4(i), 4(j), 5(c), 303(r), 47 U.S.C. 154(i), 154(j), 155(c), 251(e), 303(r) of the Communications Act of 1934, as amended, 47 CFR. parts 0 and 1 *are amended* as set forth below, effective upon publication in the **Federal Register**.

Lists of Subjects

47 CFR Part 0

Commission organization.

47 CFR Part 1

Practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 1 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

■ 2. Section 0.11 is amended by revising paragraph (a)(8) to read as follows:

§ 0.11 Functions of the Office.

(a) * * *

(8) Plan and manage the administrative affairs of the Commission with respect to the functions of personnel and position management; labor-management relations; training; budget and financial management; accounting for the financial transactions of the Commission and preparation of financial statements and reports; information management and processing; organization planning; management analysis; procurement; office space management and utilization; administrative and office services; supply and property management; records management; personnel and physical security; and international telecommunications settlements.

* * * * *

■ 3. Section 0.231 is amended by adding new paragraphs (j) and (k) to read as follows:

§ 0.231 Authority delegated.

* * * * *

(j) The Managing Director or his designee is delegated the authority, after seeking the opinion of the General Counsel, to determine, in accordance with generally accepted accounting principles for federal agencies the organizations, programs (including funds), and accounts that are required to be included in the financial statements of the Commission.

(k) The Managing Director, or his designee, after seeking the opinion of the General Counsel, is delegated the authority to direct all organizations, programs (including funds), and accounts that are required to be included in the financial statements of the Commission to comply with all relevant and applicable federal financial management and reporting statutes.

* * * * *

PART 1—PRACTICE AND PROCEDURE

■ 4. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 5. Section 1.8002 is amended by adding new paragraph (e) to read as follows:

§ 1.8002 Obtaining an FRN.

* * * * *

(e) An FRN may be assigned by the Billing and Collection Agent for North American Numbering Plan Administration and the Administrators of the Universal Service Fund and the Telecommunications Relay Services Fund. In each instance, the Billing and Collection Agent for North American Numbering Plan Administration and the Administrators of the Universal Service Fund and the Telecommunications Relay Services Fund shall promptly notify the entity of the assigned FRN.

[FR Doc. 05–8344 Filed 4–26–05; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 15

[ET Docket No. 01–278; FCC 04–98]

Radio Frequency Identification

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted rules which allowed for operation of

improved radio frequency identification (RFID) systems in the 433.5–434.5 MHz (''433 MHz'') band. The rule in § 15.240 required Office of Management and Budget approval and the Commission stated in its previous **Federal Register** publication that it would announce the effective date of that section when approved. This document announces the effective date of § 15.240.

DATES: The amendment to 47 CFR 15.240 published at 69 FR 29459, May 24, 2004, became effective on June 23, 2004.

FOR FURTHER INFORMATION CONTACT: Nancy J. Brooks, (202) 418–2454, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** 69 FR 29459, May 24, 2004, that sets forth an effective date of June 23, 2004, except for amendment to § 15.240, which contained an information collection requirement that had not been approved by the Office of Management and Budget. The document stated that the Commission will publish a document in the **Federal Register** announcing the effective date for § 15.240 and the information collection contained therein. On March 18, 2005, the Office of Management and Budget (OMB) approved the information collection requirements contained 47 CFR 15.240 pursuant to OMB Control No. 3060–1079. Accordingly, the information collection requirement contained in this rule became effective on March 18, 2005. The expiration date for the information collection requirement will be March 31, 2008.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–8341 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket Nos. 02–381, 01–14, and 03–202; FCC 04–166]

Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission (Commission) announces that a certain rule adopted in its Rural Services proceeding (WT Docket Nos. 02–381, 01–14, and 03–202; FCC 04–166) in 2004, to the extent it contained an information collection requirement that required approval by the Office of Management and Budget (OMB) was approved, and became effective March 10, 2005, following approval by OMB.

DATES: 47 CFR 1.919(c) published at 69 FR 75144 (December 15, 2004) and contained an information collection requirement that became effective March 10, 2005.

FOR FURTHER INFORMATION CONTACT: Allen A. Barna, Wireless Telecommunications Bureau, at (202) 418–0620, or at *Allen.Barna@fcc.gov*. For additional information concerning the information collection contained in this document, contact Judith-B. Herman at (202) 418–0214, or at *Judith-B.Herman@fcc.gov*.

Announcement of Effective Date of a Certain Commission Rule

1. On July 8, 2004, the Commission adopted a *Report and Order* (*Report and Order*) in WT Docket Nos. 02–381, 01–14, and 03–202; FCC 04–166, a summary of which was published at 69 FR 75144 (Dec. 15, 2004). In that *Report and Order*, the Commission stated that, upon OMB approval, it would publish in the **Federal Register** a document announcing the effective date of the change to 47 CFR 1.919(c).

2. On March 10, 2005, OMB approved the public information collection associated with this rule change under OMB Control No. 3060–0799. Therefore, the change to 47 CFR 1.919(c) became effective on March 10, 2005.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–8213 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[ET Docket No. 04–243; FCC 05–69]

Narrowbanding for Private Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document specifies the procedures by which forty Private Land Mobile Radio (PLMR) channels, which are located in frequency bands that are allocated primarily for Federal use, are to transition to narrower, more spectrally efficient channels in a process commonly known as ''narrowbanding.'' We take this action because the National Telecommunications and Information Administration (NTIA) has adopted a more rapid narrowbanding schedule in the 150.05–150.8 MHz, the 162.0125–173.2 MHz and 173.4–174 MHz (162–174 MHz), and the 406.1–420 MHz bands (collectively, the Federal bands) than the Commission has required for its licensees.

DATES: Effective May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Policy and Rules Division, Office of Engineering and Technology, (202) 418–2450, *Tom.Mooring@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket No. 04–243, FCC 05–69, adopted on March 10, 2005, and released on March 11, 2005. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM*.

Summary of the Report and Order

1. The Commission amended parts 2 and 90 of its rules to revise our transition plan for primary and secondary PLMR operations in certain Federal bands. The Commission concluded that these actions will provide for an orderly transition from wideband (25 kHz channels) to narrowband (12.5 kHz channels) operations, increase spectrum efficiency, maintain compatibility with Federal operations, permit PLMR licensees to operate using existing equipment with greater confidence that their critical operations will not be suddenly required to cease transmissions, and significantly reduce the probability that wideband PLMR operations will interfere with new Federal operations. Specifically, the Commission narrowbanded 25 Hydrological and Meteorological (Hydro) channels, nine Forest Firefighting and Conservation channels (two of these channels are available to conservation agencies, while all nine are available for firefighting use), two Public Safety channels, three medical

radiocommunication system channels (MED channels), and one channel for Stolen Vehicle Recovery System (SVRS). In addition, the Commission added 23 Hydro channels to the rules, removed six Hydro channels (only four of which are currently licensed) from our rules, and will no longer license two MED channels.

2. The transition plan that was adopted today refines certain aspects of the Commission's larger narrowbanding policies, most recently modified in the *Narrowbanding Third MO&O in the Refarming Proceeding*, FCC 04–292, 19 FCC Rcd 25045 (2004), in the following ways:

Primary Operations

- As of the effective date of the *Report and Order,* the Commission limited new MED channel stations that use the frequencies 150.775 MHz and 150.790 MHz to a transmitter output power of 100 watts Effective Radiated Power (ERP). New wideband systems on these frequencies will be authorized on a primary basis until January 1, 2008. Wideband systems licensed prior to January 1, 2008, may be expanded until January 1, 2011, and may continue to operate on a primary basis until January 1, 2013, at which time wideband transmissions must cease;
- As of the effective date of the *Report and Order,* the Commission will not accept applications or issue licenses for new wideband systems that use the MED channel frequency 163.250 MHz. Existing wideband systems on this frequency may be expanded until January 1, 2011, and may continue to operate on a primary basis until January 1, 2013, at which time wideband transmissions must cease. The Commission will not narrowband the non-Federal MED channel paging frequency 152.0075 MHz;
- On a going-forward basis, new non-Federal operations on the three MED channel frequencies in the Federal band (150.775 MHz, 150.790 MHz, and 163.250 MHz) will be limited to medical radiocommunication systems;
- As of the effective date of the *Report and Order,* the Commission will no longer issue new licenses for the frequencies 150.7825 MHz and 150.7975 MHz. However, the Commission will continue to renew existing licenses on these channels indefinitely; and
- The existing SVRS system operated by the LoJack Corporation (LoJack) and police licensees may continue wideband operations until 14 years after the effective date of the *Report and Order,* at which time wideband transmissions must cease. Any new SVRS licensee that begins service after the effective date of the Report and Order must operate a narrowband system.

Secondary Operations

- The Commission revised its Hydro channel plan by adding 23 channels and by deleting six channels in order to make it consistent with NTIA's plan, and the Commission included the Hydro channels in the 406.1–420 MHz band in our transition plan to 12.5 kHz channels;
- Existing Hydro channel licensees, which operate on frequencies that are being removed from the Hydro Plan (171.975 MHz, 409.675 MHz, 409.725 MHz, and 412.625 MHz), must migrate to a center frequency that is available under the new Hydro channel plan on a timetable that is recommended by the Hydro Committee, agreed to by NTIA, and approved by the FCC;
- As of the effective date of the *Report and Order,* the Commission will not accept applications or issue licenses for new wideband stations for channels whose operation is permitted on a secondary basis (Hydro, Forest Firefighting and Conservation, and the Public Safety channels) in the 162–174 MHz band.
- New wideband Hydro stations in the 406.1–420 MHz band will be authorized on a secondary basis until January 1, 2008.
- Existing wideband systems in the 162–174 MHz band that operate on a secondary basis may be expanded until January 1, 2011, and may continue to operate until January 1, 2013, at which time wideband operations must cease. However, these licensees must modify or discontinue their operations if, at any time, their operations cause interference to new Federal operations,
- Existing wideband Hydro systems in the 406.1–420 MHz band may be expanded until January 1, 2011, and may continue to operate until January 1, 2013, at which time wideband operations must cease. However, these licensees must modify or discontinue their operations if, at any time after January 1, 2008, their operations cause interference to new Federal operations; and

Coordination With Radio Astronomy

- The Commission revised the list of radio astronomy observatories and the associated areas where prior coordination for fixed operations is required, and modified the power limit for stations in the fixed and mobile services in order to better protect the radio astronomy service (RAS) in the 406.1–410 MHz band.

3. *Refining the Commission's Narrowbanding Proceedures for the Federal Bands.* The Commission adopted proposals, as modified to reflect the narrowbanding dates as modified by the *Narrowbanding Third MO&O.* As an initial matter, the Commission included the 406.1–420 MHz band in our transition plan to narrowband channels. No commenters addressed this proposal. The Commission concluded that action is necessary to address the federal narrowbanding matters in a complete and comprehensive manner, and because secondary users in these bands will be directly affected by the Federal narrowbanding efforts and Hydro channel plan modifications. Also, by providing a narrowbanding procedure for existing non-Federal Hydro operations in the band, the Commission will aid the Hydro Committee in its efforts to make the most efficient use of the new channel plan. Those actions that we proposed to take effect on January 1, 2005, will necessarily instead be tied to the effective date of the *Report and Order.*

4. For new stations in the Federal bands the Commission adopted deadlines, as proposed in this proceeding, *Notice of Proposed Rule Making* (NPRM), FCC 04–156, 69 FR 46462, August 3, 2004, that align with Federal narrowbanding requirements: As of the effective date of this *Report and Order,* the Commission will not accept applications or issue licenses for new wideband Hydro, Forest Firefighting and Conservation, Public Safety, and MED channel systems in the 162–174 MHz band. The Commission will authorize new wideband operations for the MED channel frequencies 150.775 MHz and 150.790 MHz and Hydro channels in the 406.1–420 MHz band only until January 1, 2008. Although, the Commission does not believe that NTIA will generally agree to waiver requests for wideband operations in the Federal bands, we will consider granting wideband applications after these dates, if accompanied by a waiver request, in the following circumstances: for Forest Firefighting and Conservation channels, if a waiver has been recommended by a sponsoring Federal agency and if NTIA agrees with the recommendation; and for public safety use of the frequency 166.25 MHz and 170.15 MHz, if NTIA agrees to the grant of the waiver application. In addition, the Commission recognizes the role of the Hydro Committee in promoting efficient use of the Hydro channels by both Federal agencies and non-Federal licensees, and realizes that the Hydro Committee is in the best position to recommend the narrowband transition

cycle for specific Hydro channel users. As such, the Commission intend to support applications for new wideband channels after the Federal wideband cut-off dates, if such a grant is recommended by the Hydro Committee and is accompanied by NTIA's concurrence.

5. The Commission concluded that the deadlines are necessary and appropriate for the class of Commission licensees that maintain operations on these Federal bands, particularly in light of NTIA's policy to no longer authorize wideband assignments. Although the International Municipal Signal Association and the International Association of Fire Chiefs, Inc. (IMSA/IAFC) request that the Commission employ a 2018 cut-off date for new wideband applications in the two primary MED channels might have short-term financial benefits for budget-constrained agencies, doing so would compromise NTIA's efforts to expand the band by adding efficient new narrowband channels, would create even greater disparities between Federal and non-Federal operations in the band, and would not change the ultimate transition to narrowband channels. Moreover, the 2008 cut-off for new wideband stations still allows applicants for Commission licenses in the band to take account of the narrowbanding requirement adopted today prior to deciding whether to seek use of those two channels for new facilities.

6. For existing wideband systems operating in the Federal bands, the Commission will maintain the January 1, 2011 deadline for system expansions and the January 1, 2013 as the date by which all licensees must migrate completely to 12.5 kHz narrowband technology. This action reflects the deadlines recently adopted in the *Narrowbanding Third MO&O.*

7. The Commission will continue to recognize primary status for MED channels in the Federal bands that are listed in footnote US216 (150.775 MHz, 150.790 MHz and 163.250 MHz) and it will continue to treat these MED channels in a similar manner to all other primary land mobile licensees under the Commission's jurisdiction. Users of these channels still must narrowband their operations by the same January 1, 2013 deadline the Commission has established for all other licensees in the Federal bands. Our approach preserves our traditional first-in-time policy by which the first licensed entity does not have to modify its operations but instead maintains a primary status in relation to subsequently licensed entities. Under this policy, an existing wideband MED channel operation is entitled to protection from interference from new Federal operations and non-Federal licensees that subsequently begin operations in the band, and will not need to modify existing operations to prevent interference to these new entrants. The Commission expects that NTIA will protect these wideband operations from harmful interference from new or modified Federal operations in the band until the January 1, 2013, narrowbanding date.

8. For existing licensees operating in the Federal bands on a secondary basis ''specifically, users of the Hydro, Forest Firefighting and Conservation, and the Public Safety channels—the Commission notes that NTIA may now authorize new Federal operations in the 162–174 MHz band on channels that are only 12.5 kHz away from the center frequencies of non-Federal licenses. After January 1, 2008, NTIA may authorize new Federal operations in the 406.1–420 MHz bands that are only 12.5 kHz away from the center frequencies of non-Federal Hydro stations that operate on a secondary basis. Thus, while the Commission will permit these licensees to continue to operate on wideband channels on a non-interference basis until as late as 2013, it emphasize that they must modify or discontinue wideband operations if, at any time (for the 162–174 MHz band), and at any time after January 1, 2008 (for the 406–416 MHz band), they cause interference to new Federal operations. Once a Federal agency begins narrowband operations, these non-Federal licensees must be prepared to accept harmful interference, and will be subject to termination if harmful interference is caused to Federal operations. Termination of operations will be required regardless of the length of advance notice, as well as in cases where we are unable to provide advance notice. The Commission will, of course, closely work with NTIA under the auspices of the FAS of the IRAC to provide as much advance notice as possible to non-Federal licensees that a proposed Federal assignment has been filed with NTIA.

9. Consistent with the Commission's decision in the *Narrowbanding Third MO&O,* we will not narrowband the MED channel at 152.0075 MHz, which is used for paging. This channel is within a band that is allocated primarily for non-Federal use, is not subject to NTIA's narrowbanding efforts, and thus will continue to follow the Commission's Rules regarding paging operations. In the *Narrowbanding Third MO&O,* the Commission stated that paging channels are neither congested nor do they typically create interference problems given, for example, their relatively short duty cycle. The Commission agree with the 152 MHz Paging Commenters that there are benefits to retaining wideband operations on this channel, and conclude that such benefits outweigh any benefits that would be realized from narrowbanding all frequencies used by medical radiocommunication systems.

10. The Commission will, include the MED channel at 163.250 MHz in its narrowbanding requirements. The Commission distinguished this channel from other paging channels because it operates within the Federal bands, and note that NTIA did not grant Federal agencies a paging exemption in its narrowbanding plan. The Department of Veterans Affairs (VA) is currently moving to narrowband its paging operations to meet NTIA's mandated narrowbanding schedule. Given our desire to limit the potential for interference between existing licensees and new NTIA-approved operations on a channel used for important medical paging applications, the Commission concluded that it is appropriate for us to apply the January 1, 2013 narrowbanding deadlines to this channel. The Commission noted, however, that any wideband operations on this channel are subject to termination if harmful interference is caused to Federal operations.

11. Lastly, the Commission found that it is unnecessary and potentially detrimental to our narrowbanding efforts to require that non-Federal licensees to use 6.25 kHz channels in the Federal bands in advance of Federal agencies at this time, and will modify our rules accordingly. The Commission see no advantage to this requirement in the Federal bands, given the uncertainty as to if or when Federal entities will begin using 6.25 kHz channels.

12. *MED Channels (US216).* The Commission will no longer license non-Federal stations on the frequencies 150.7825 MHz and 150.7975 MHz. These frequencies, which were never incorporated into footnote US216, lie within the Federal military band and additional authorizations would limit the future deployment of vital military systems. IMSA/IAFC objects to this proposal, noting that these channels have been used by public safety licensees in many large cities and concluding that such use ''far outweighs'' the public gain in limiting use of the channels. The Commission disagree. Because these channels were not part of the original 1974 agreement with NTIA, but were instead only recently licensed to non-Federal applicants as part of the *Refarming*

Proceeding, and because of NTIA's interest in making the band available for narrowband Federal systems—including those used by the military—the Commission conclude that the discontinuance of new licensing of these frequencies will benefit the public good by allowing vital new Federal systems to deploy. The Commission will permit the existing mobile stations that are authorized as of effective date of this *Report and Order* to use the frequencies 150.7825 MHz and 150.7975 MHz indefinitely with their current usage designation.

13. The Commission adopted its proposal to revise footnote US216 to list the available frequencies (152.0075 MHz and 163.250 MHz) in lieu of the 152–152.0150 MHz and 163.2375–163.2625 MHz bands. No party commented on this proposal. It also revised, in concurrence with NTIA, the two non-Federal bands at 460 MHz in footnote US216 in order to align the non-Federal 460 MHz bands in footnote US216 with the Commission's revised Rules and to formally provide Federal agencies access to all 30 of the new MED channels in the 463 MHz and 468 MHz bands. These revisions to footnote US216 are included in the final rules.

14. With respect to new licenses on the mobile channels 150.775 MHz and 150.790 MHz and the paging channel 163.250 in the Federal band, the Commission adopted its proposal to implement, on a going forward basis, the footnote US216 requirement that the use of these channels be limited to medical radiocommunications systems. This action will support Federal users that have made and implemented spectrum usage plans based on the text of the footnote, and will have the added benefit of harmonizing use of these channels with the concept of medical radiocommunications systems as it was first adopted in 1974. The Commission notes that several commenters opposed this change. While it recognizes that the current usage practice is beneficial in that it permits a broad range of medical and public safety uses of the frequencies, the Commission cannot reconcile an expansion of such use with our obligation to Federal users that it license these frequencies in the Federal bands on a limited basis for medical radiocommunications systems, as reflected in footnote US216. The Commission will, with the concurrence of NTIA, permit existing licensees to continue even if such operations are not restricted to medical radiocommunications systems operations. Also, the Commission will not change the existing frequency coordinator for the paging channel frequencies, as proposed in the *NPRM.*

15. The Commission is limiting all operations on the mobile channels for licenses issued after the effective date of this *Report and Order* to a maximum output power of 100 watts ERP. IMSA/IAFC objected to the Commission's proposal to limit the transmitter output power of the mobile channels to 2.5 watts, arguing that these channels provide needed frequency separation from the primary Public Safety allocation for two-frequency repeater operations. A general review of our licensing data indicates that mobile stations operating on these frequencies have been authorized an output power between 2.5 and 200 watts ERP, but with the majority in the range of 30 to 100 watts. The Commission continues to believe that we must take steps to harmonize non-Federal use of the mobile channels, and that it should work to complement rather than frustrate NTIA's narrowbanding efforts in the Federal bands. However, the Commission is also cognizant of the difficult funding challenges faced by public safety users of these frequencies, recognize the important work these entities routinely undertake, and appreciate the intensive use of these bands as described in IMSA/IAFC's comments. The 100 watt limit established for new licenses caps these channels at a lower power level than other channels in the 150–174 MHz band, and will promote wider availability of these channels for both new Federal and non-Federal users. However, the 100 watt limit that was set is substantially larger than the 2.5 watt proposal, and is consistent with the majority of current use in the band. The Commission will allow licensees to continue existing operations under their existing authorizations, subject only to the more general narrowbanding requirements it adopted. The Commission, explicitly prohibit airborne operations by both existing and future mobile channel licensees. Such operations have the potential to cause wide-area interference, and adoption of the prohibition will promote continued cooperative use of the band by both Federal and non-Federal entities and is consistent with § 4.3.11 of the *NTIA Manual.*

16. Finally, with respect to the non-Federal paging channel 150.0075 MHz—the Commission is not narrowbanding—it is removing limitation 19. The Commission concludes that this limitation, which reserved the frequency 150.0075 MHz for assignment to stations for intersystem operations only and which required that these operations be primarily base-mobile communications, overly limits widespread use of the band. In addition, because this paging channel is within a non-Federal band, the Commission will continue to make it available for a full range of medical and public safety uses and will not restrict its future use to medical radiocommunications systems exclusively.

17. *Stolen Vehicle Recovery Systems (US312).* LoJack, the only commenter to address this issue, supports creation of a narrowbanding plan for SVRS systems. In order to preserve the substantial utility of the existing wideband SVRS for consumers and law enforcement agencies, LoJack requests that the Commission provide at least a 14 year transition period from the effective date of final rules in this proceeding. LoJack states that this schedule would give it four years to develop and deploy a narrowband system and would give ten years for police departments and consumers relying on the installed base of wideband equipment to continue to receive service once the narrowband system is deployed.

18. The Commission finds LoJack's proposal persuasive. Given the need to develop and test new equipment, as well as the scope of the transition, a fourteen-year transition provides sufficient time for SVRS to adopt narrowband technology in a manner that does not jeopardize the public benefits associated with the service. The Commission notes LoJack's claims that it will not be able to continue serving its wideband customers during the transition period if Federal agencies begin operating on the new adjacent narrowband frequencies of 173.0625 MHz and 173.0875 MHz. The Commission will work with NTIA to prevent Federal entities from being assigned new narrowband channels that are spaced only 12.5 kHz away from the SVRS center frequency until after the end of the transition period (*i.e.*, approximately 2019), and will use our role as a voting member of the FAS to ensure that the primary status afforded to SVRS continues to be recognized during the Federal frequency assignment process. As previously noted, LoJack is currently the only SVRS licensee. Because subsequent SVRS licensees will have to deploy equipment to begin service, all new licensees will be required to employ narrowband operations without the benefit of a transition period. To reflect these new narrowband requirements in the SVRS, the Commission amended—in concurrence with NTIA—footnote US312, which is shown in the final

rules. Accordingly, the Commission amended § 90.20 by revising paragraph (e)(6) to reflect the 12.5 kHz maximum authorized bandwidth for SVRS and associated transition plan.

19. *Hydro Channels and Protection for Radio Astronomy (US13 and US117).* The Commission did not receive any comments that addressed our proposals for the Hydro channels. The Commission adopted it proposals and revised its Rules to reflect an updated Hydro channel plan that is consistent with the channel plan shown in the *NTIA Manual*. Consistency between Federal and non-Federal band plans furthers the public interest and safety by maintaining a ready flow of hydrologic and metrological data between non-Federal and Federal entities. This decision also recognizes the fact that non-Federal Hydro stations operation is closely coordinated the Hydro Committee. The Commission note, for example, that the Hydro Committee has begun encouraging the use of narrowband equipment by non-Federal applicants, and a review of our licensing database indicates that while many non-Federal Hydro operations still use wideband channels, some narrowband use is prevalent among the more newly licensed channels.

20. The Commission discussed the process for Commission licensees to narrowband the existing Hydro channels that are to be retained by NTIA. It now also require licensees operating on the Hydro channels that are being removed from the Hydro channel plan to modify their equipment and station licenses and migrate to a center frequency under the new Hydro channel plan on a timetable as advised by the Hydro Committee and approved by NTIA and the Commission. As of January 1, 2005, licensees of stations transmitting on the frequency 169.575 MHz should be prepared to cease or relocate operations, if their wideband operations cause harmful interference to Federal operations. As of January 1, 2008, licensees of stations transmitting on the frequencies 409.675 MHz, 409.725 MHz, or 412.625 MHz should be prepared to cease or relocate operations, if their wideband operations cause harmful interference to Federal operations. Finally, all licensees must cease operating on these channels after January 1, 2013.

21. To implement these proposals, the Commission revised its Rules to reflect the new Hydro channel plan and our plan for transitioning to narrowband channels, as well as to make other necessary modifications to reflect the Hydro operations. Also, in concurrence with NTIA, the Commission revised footnote US117 to provide more effective protection of RAS reception in the 406.1–410 MHz band. These revisions are included in the final rules.

22. *Forest Firefighting and Conservation Channels (US8).* The Commission did not receive any comments that addressed our proposals. The Commission has adopted a requirement that applications for use of these channels be accompanied by a letter of concurrence. Based on our experience with past applications that included such a letter, the Commission believes that this practice aids the coordination of assignments between NTIA and the Commission. The Commission is also moving the existing limitations that are contained in § 90.20 of the Commission's rules into a new subsection of § 90.265. Section 90.265 of the rules already describes procedures by which the Commission license two services permitted on Federal bands pursuant to United States footnotes—Hydro operations and wireless microphones. The Commission concludes it would be convenient and consistent to expand this section to include similarly situated services including, *inter alia*, the Forest Firefighting and Conservation channels.

23. *Public Safety Channels (US11).* IMSA/IAFC is the only party to address the proposals dealing with the two Public Safety channels. IMSA/IAFC states that these Public Safety channels are widely assigned to agencies in the New York City metropolitan area and nearby environs that are expected to provide critical support to homeland security operations. IMSA/IAFC states that the current coordination procedures between Public Safety and Federal agencies are sufficient to address any concerns regarding possible interference, and urges us to ''tread cautiously'' to implement a policy so that Federal agencies would implement narrowband operations on the new channels adjacent to the Public Safety channels only as an absolute last resort when other acceptable channels are not available, and to work to expedite timely frequency coordination procedures for these channels.

24. The Commission recognizes the unique needs and critical nature of public safety communications in the New York City metropolitan area and the funding difficulties that many of these licensees face, and have worked with NTIA to limit the possibility that it will assign the new narrowband channels that are immediately adjacent to the two Public Safety channels in the New York City area until the conclusion of our transition period to mandatory narrowband operations. The Commission will continue to work in cooperation with NTIA, and within the Federal frequency coordination process, to be sure this remains the case.

25. The Commission created a new paragraph in § 90.265 of the rules to describe these public safety channels, revising the existing limitation contained in § 90.20(d)(47) of the Commission's rules to serve as a cross-reference, and updated footnote US11 in concurrence with NTIA to remove an outdated reference to wideband operations and to simplify the description of public safety and remote pickup broadcast operations in the band. The Commission stated in its rules that these operations are on a secondary basis to any Federal station, in order to give effect to the restriction embodied in footnote US11 that non-Federal operations on 166.250 MHz and 170.150 MHz operate on the condition that no harmful interference is caused to ''present or future'' Federal stations. Finally, the Commission will not require a letter of concurrence by a sponsoring Federal agency in conjunction with an application for use of these channels. The Commission is persuaded by IMSA/IAFC's claims that such a requirement would ''entail an unneeded and time consuming step'' in a coordination process that it describes as ''more than sufficient.''

26. *Public Coast Station Channels (US223).* Footnote US223 makes a channel available for public coast station use in limited areas near the Canadian border. Because ship and public coast operations do not fall under the same rules as PLMR operations, footnote US223 does not need to be modified to support NTIA's narrowbanding timetable, and therefore the Commission proposed no changes to these frequencies as part of this proceeding.

27. *Wireless Microphone Channels (US300).* Footnote US300 specifies eight frequencies that are available for wireless microphone operations on a secondary basis to Federal and non-Federal operations. Because wireless microphones operate at very low power (50 mW output power), there is a minimal likelihood that they will cause interference to high-power land mobile operations. Thus, the Commission proposed no changes to the frequencies allocated for wireless microphones as part of footnote US300. No comments were received on these proposals. Accordingly, the Commission will not narrowband these operations.

Final Regulatory Flexibility Analysis

28. As required by the Regulatory Flexibility Act of 1980, as amended

(RFA),[1] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice of Proposed Rule Making* (''NPRM'')[2] in ET Docket No. 04–243. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No written public comments were received concerning the initial regulatory flexibility analysis. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

29. In the 150.05–150.8 MHz, 162–174 MHz, and 406.1–420 MHz bands, the National Telecommunications and Information Administration (NTIA) is transitioning Federal operations in the fixed and land mobile services from wideband (25 kHz) to narrowband (12.5 kHz) channels at a more rapid schedule than the Commission has adopted for Private Land Mobile Radio (PLMR) operations in these bands. Because there could be extended periods during which existing PLMR wideband operations may not be compatible with narrowband Federal operations, the Commission has revised its current narrowbanding plan for these bands to take into account that many PLMR operations in the above Federal bands are authorized on the condition that they not cause interference to Federal operations.

30. The Commission's objectives are to provide for a more orderly transition from wideband to narrowband operations, increase spectrum efficiency, maintain compatibility with Federal operations, permit licensees to operate using existing equipment for the maximum amount of time possible, and significantly reduce the probability that wideband operations will interfere with new Federal operations.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.

31. There were no comments filed that specifically addressed the rules and policies addressed in the IRFA.

C. Description and Estimate of the Number of Small Entities To Which the Final Rule Will Apply

32. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.[5] Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

33. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[7] Nationwide, there are approximately 1.6 million small organizations.[8] ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''[9] As of 1997, there were approximately 87,453 governmental entities in the United States.[10] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer then 50,000 and 1,498 have populations of 500,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be approximately 84,098 or fewer.

34. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any such entity employing no more than 1,500 persons.[11] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PMLR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[12]

35. The final rules adopted in the R&O affect the following PLMR licensees: (1) Industrial/Business Pool and state and local government licensees that are authorized to make hydrological and meteorological (Hydro) measurements under footnote US13; (2) forest firefighting agencies, which are primarily state government licensees, and forest conservation agencies that are authorized under footnote US8; (3) Public Safety Pool licensees that are authorized under footnote US11; and (4) hospital, medical centers, nursing homes, *etc.* that operate medical radiocommunication systems, which are authorized under footnote US216. These United States footnotes are fully discussed in the R&O.

36. *Hydro Channel Users.* The Commission has authorized 9 licensees to operate 219 fixed stations on the six channels that would be removed from the Hydro channel plan: (1) One licensee (the State of California) is authorized to operate 15 fixed stations on the frequency 169.575 MHz; (2) five licensees are authorized to operate 83 fixed stations at 409.675 MHz; (3) three licensees are authorized to operate ten fixed stations at 409.725 MHz; (4) four licensees are authorized to operate 97 fixed stations at 412.625 MHz; and (5) there are no licensees authorized to operate on the frequencies 170.375 MHz and 171.975 MHz. The Commission has issued 1053 licenses (there is at least one station per license) for the remaining Hydro channels that are

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] 19 FCC Rcd 12690, 2004, ET Docket No. 04–243.

[3] 5 U.S.C. 604.

[4] *Id.* at 604(a)(3).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[6] *Id.* at 632.

[7] 5 U.S.C. 601(4).

[8] Independent Sector, The New Nonprofit Almanac and Desk Reference (2002).

[9] 5 U.S.C. 601(5).

[10] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[11] *See* 13 CFR 121.201, NAICS code 517212.

[12] *See* generally 13 CFR 121.201.

being narrowbanded. We believe that some of the Hydro channel licensees are small businesses or small governmental entities.

37. *Forest Firefighting and Conservation Agencies.* The Commission has authorized 21 licensees to operate 414 fixed stations and 45,630 mobile stations on the nine channels that are available to forest firefighting agencies; two of these frequencies are also available for use by conservation agencies. By Commission Rule, these frequencies are reserved primarily for assignment to state licensees. Assignments to other licensees may be made only where the frequencies are required for coordinated operation with the state system to which the frequency is assigned. The 21 licensees consist of 19 states and state agencies, the County of Los Angeles, and a non-profit organization. This small organization may be impacted by our actions.

38. *Public Safety Licensees.* The Commission has granted 27 licensees authorization to operate wideband equipment on the frequencies 166.25 MHz and 170.15 MHz. By Commission Rule, these frequencies are to be assigned to stations in the Public Safety Pool that are at points within 240 kilometers of New York City. Specifically, the Commission has granted 15 licensees authorization to operate 1295 mobile stations, 95 pagers, and 30 fixed stations using the frequency 166.25 MHz. The Commission has granted 12 licensees authorization to operate 899 mobile stations, 165 pagers, and 22 fixed stations on the frequency 170.15 MHz. We believe that many of these public safety licensees are small governmental entities.

39. *Medical Radiocommunication Systems.* The Commission has issued 510 licenses for the frequency 150.775 MHz and 424 licenses for the frequency 150.790 MHz. By Commission Rule, these 150 MHz channels are used only by mobile stations. For example, these frequencies may be used for voice transmissions from a portable (hand-held) unit to an ambulance. The Commission has issued 524 licenses for the frequency 163.250 MHz. By Commission Rule, the frequency 163.250 MHz can be assigned only for one-way paging. We believe that most of the hospitals, medical centers, and nursing homes that operate medical radiocommunication systems are small businesses or small governmental entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

40. The final rules require that:

- PLMR licensees employing wideband channels for Hydro, Forest Firefighting and Conservation, and public safety operations modify or discontinue operations if, after May 27, 2005, these wideband operations cause interference to new Federal operations in the 162–174 MHz band, or if, after January 1, 2008, these wideband operations cause interference to new Federal operations in the 150.05–150.8 MHz and 406.1–420 MHz bands;
- Hydro channel licensees operating on the center frequencies 169.575 MHz, 409.675 MHz, 409.725 MHz, and 412.625 MHz cease operations not later than January 1, 2013;
- PLMR applicants requesting authority to operate Hydro, Forest Firefighting and Conservation, public safety, and medical radiocommunication stations in the 162–174 MHz band use narrowband channels after January 1, 2005; and that these applicants use narrowband channels after January 1, 2008 in the 150.05–150.8 MHz and 406–416 MHz bands; and
- New Hydro stations that would operate on the center frequencies 406.125 MHz and 406.175 MHz be limited to a transmitter output power of 125 watts and required to coordinate with the Radio Astronomy Observatory at Socorro, New Mexico.

41. If a licensee is required to modify its operations, we believe that the licensee would either buy new narrowband equipment or that the licensee would hire a vendor to modify some or all of its wideband equipment. We are uncertain of the exact costs relating to the narrowbanding requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

42. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[13]

43. So long as incompatibilities are not created with Federal narrowband operations, we are permitting incumbent licensees to use existing equipment until January 1, 2013. We are requiring that the 9 licensees of the six Hydro channels being deleted from the Hydro channel plan modify their equipment and station licenses and migrate to a center frequency listed in the new Hydro channel plan on a timetable as advised by the Hydro Committee and approved by NTIA and the Commission.

44. We are grandfathering those incumbent stations that operate on the frequencies 150.7825 MHz and 150.7975 MHz indefinitely. We are exempting equipment designed for use in the Federal bands from our current 6.25 kHz equipment certification requirement.

45. Report to Congress: The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[14] In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

46. Pursuant to sections 1, 4(i), 7(a), 301, 302(a), 303(a)–(c), 303(f), 303(g), 303(r), 307, 308, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 157(a), 301, 302(a)–(c), 303(f), 303(g), 303(r), 307, 308, and 332, this *report and order* is hereby *adopted*.

47. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *report and order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 90

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 90 as follows:

[13] 5 U.S.C. 603(c).

[14] *See* 5 U.S.C. 801(a)(1)(A).

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising footnotes US11, US13, US117, US216, and US312 in the list of United States footnotes and footnote G5 in the list of Federal Government footnotes to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

United States (US) Footnotes

* * * * *

US11 On the condition that harmful interference is not caused to present or future Federal stations in the band 162–174 MHz, the frequencies 166.25 MHz and 170.15 MHz may be authorized to non-Federal stations, as follows: (1) Eligibles in the Public Safety Radio Pool may be authorized to operate in the fixed and land mobile services for locations within 150 miles (241.4 kilometers) of New York City; and (2) remote pickup broadcast stations may be authorized to operate in the land mobile service for locations within the continental United States, excluding Alaska, locations within 150 miles of New York City, and the Tennessee Valley Authority Area (TVA Area). The TVA Area is bounded on the west by the Mississippi River, on the north by the parallel of latitude 37° 30′ N., and on the east and south by that arc of the circle with center at Springfield, Illinois, and radius equal to the airline distance between Springfield, Illinois, and Montgomery, Alabama, subtended between the foregoing west and north boundaries.

US13 The following center frequencies, each with a channel bandwidth not greater than 12.5 kHz, are available for assignment to non-Federal fixed stations for the specific purpose of transmitting hydrological and meteorological data in cooperation with Federal agencies, subject to the condition that harmful interference will not be caused to Federal stations:

HYDRO CHANNELS (MHZ)

169.425	170.2625	171.100	406.1250
169.4375	170.275	171.1125	406.1750
169.450	170.2875	171.125	412.6625
169.4625	170.300	171.825	412.6750
169.475	170.3125	171.8375	412.6875
169.4875	170.325	171.850	412.7125
169.500	171.025	171.8625	412.7250
169.5125	171.0375	171.875	412.7375
169.525	171.050	171.8875	412.7625
170.225	171.0625	171.900	412.7750
170.2375	171.075	171.9125	415.1250
170.250	171.0875	171.925	415.1750

New assignments on the frequencies 406.125 MHz and 406.175 MHz are to be primarily for paired operations with the frequencies 415.125 MHz and 415.175 MHz, respectively.

* * * * *

US117 In the band 406.1–410 MHz: stations in the fixed and mobile services shall be limited to a transmitter output power of 125 watts, and new authorizations for stations, other than mobile stations, shall be subject to prior coordination by the applicant in the following areas:

(1) *Arecibo Observatory of the National Astronomy and Ionosphere Center.* Within Puerto Rico and the U.S. Virgin Islands, contact: Spectrum Manager, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612. Phone: 787–878–2612, Fax: 787–878–1816.

(2) *Very Large Array (VLA) of the National Radio Astronomy Observatory (NRAO).* Within a 350 kilometer radius that is centered on 34° 04′ 44″ North Latitude, 107° 37′ 04″ West Longitude, contact: Spectrum Manager, National Radio Astronomy Observatory, P.O. Box O, 1003 Lopezville Road, Socorro, New Mexico 87801. Phone: 505–835–7000, Fax:505–835–7027.

(3) *Table Mountain Observatory of the Department of Commerce (407–409 MHz only).* Within a 10 kilometer radius that is centered on 40° 07′ 50″ North Latitude, 105° 14′ 40″ West Longitude, contact: Radio Frequency Coordinator, Department of Commerce, 325 Broadway, Boulder, Colorado 80303. Phone: 303–497–6548, Fax: 303–497–3384.

The non-Federal use of this band is limited to the radio astronomy service and as provided by footnote US13.

* * * * *

US216 The frequencies 150.775 MHz, 150.790 MHz, 152.0075 MHz, and 163.250 MHz, and the bands 462.94688–463.19688 MHz and 467.94688–468.19688 shall be authorized for the purpose of delivering or rendering medical services to individuals (medical radiocommunication systems), and shall be authorized on a primary basis for Federal and non-Federal use. The frequency 152.0075 MHz may also be used for the purpose of conducting public safety radio communications that include, but are not limited to, the delivering or rendering of medical services to individuals.

(a) The use of the frequencies 150.775 MHz and 150.790 MHz are limited to mobile stations transmitting a maximum of 100 watts Effective Radiated Power (ERP). Airborne operations are prohibited.

(b) The use of the frequencies 152.0075 MHz and 163.250 MHz are limited to base stations that are be authorized only for one-way paging communications to mobile receivers. Transmissions for the purpose of activating or controlling remote objects on these frequencies shall not be authorized.

(c) Non-Federal licensees in the Public Safety Radio Pool holding a valid authorization on May 27, 2005, to operate on the frequencies 150.7825 MHz and 150.7975 MHz may, upon proper renewal application, continue to be authorized for such operation; provided that harmful interference is not caused to present or future Federal stations in the band 150.05–150.8 MHz and, should harmful interference result, that the interfering non-Federal operation shall immediately terminate.

* * * * *

US312 The frequency 173.075 MHz may also be authorized on a primary basis to non-Federal stations in the Public Safety Radio Pool, limited to police licensees, for stolen vehicle recovery systems (SVRS). As of May 27, 2005, new SVRS licenses shall be issued for an authorized bandwidth not to exceed 12.5 kHz. Stations that operate as part of a stolen vehicle recovery system that was authorized and in operation prior to May 27, 2005 may operate with an authorized bandwidth not to exceed 20 kHz until April 27, 2019. After that date, all SVRS shall operate with an authorized bandwidth not to exceed 12.5 kHz.

* * * * *

Federal Government (G) Footnotes

* * * * *

G5 In the bands 162.0125–173.2, 173.4–174, 406.1–410 and 410–420 MHz, use by the military services is limited by the provisions specified in the channeling plans shown in Sections 4.3.7 and 4.3.9 of the NTIA Manual.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 3. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of

1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 4. Section 90.20 is amended to read as follows:

■ a. Revise the following 15 entries to the table in paragraph (c)(3);

■ b. Add an entry for the 406 to 416 frequency bands to the table in paragraph (c)(3);

■ c. Revise paragraphs (d)(47), (d)(48), and (d)(49);

■ d. Remove and reserve paragraphs (d)(50) and (d)(51);

■ e. Add paragraphs (d)(87) and (d)(88); and

■ f. Revise paragraph (e)(6) introductory text.

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) *Frequencies.*

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* *	* *	*	*
Megahertz			
* *	* *	*	*
150.775	Mobile	87	PM.
150.7825	....do	88	PM.
150.790	....do	87	PM.
150.7975	....do	88	PM.
* *	* *	*	*
152.0075	Base	13, 30	PS.
* *	* *	*	*
169 to 172	Mobile or operational fixed	48	
* *	* *	*	*
170.425	....do	9, 49	PO.
170.475	....do	9, 49	PO.
170.575	....do	9, 49	PO.
171.425	....do	9, 49	PO.
171.475	....do	9, 49	PO.
171.575	....do	9, 49	PO.
172.225	....do	9, 49	PO.
172.275	....do	9, 49	PO.
172.375	....do	9, 49	PO.
* *	* *	*	*
406 to 416	Operational fixed	48	
* *	* *	*	*

(d) * * *

* * * * *

(47) This frequency may be assigned to stations in the Public Safety Pool in accordance with the provisions of § 90.265.

(48) Frequencies in this band will be assigned only for transmitting hydrological or meteorological data or for low power wireless microphones in accordance with the provisions of § 90.265.

(49) This frequency may be assigned only for forest firefighting and conservation activities in accordance with the provisions of § 90.265.

* * * * *

(87) The use the frequencies 150.775 MHz and 150.790 MHz are limited to a transmitter output power of 100 watts Effective Radiated Power (ERP) as of May 27, 2005.

(88) Use of this frequency is limited to stations licensed as of May 27, 2005.

(e) * * *

* * * * *

(6) The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with Federal stations in the fixed and mobile services. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring. Mobile transmitters operating on this frequency are limited to 2.5 watts power output and base transmitters are limited to 300 watts ERP. F1D and F2D emissions may be used within a maximum authorized bandwidth of 12.5 kHz, except that stations that operate as part of a stolen vehicle recovery system that was authorized and that was in operation prior to May 27, 2005 may operate with a maximum authorized bandwidth of 20 kHz until April 27, 2019. Transmissions from mobiles shall be limited to 200 milliseconds every 10 seconds, except that when a vehicle is being tracked actively transmissions may be 200 milliseconds every second. Alternatively, transmissions from mobiles shall be limited to 1800 milliseconds every 300 seconds with a maximum of six such messages in any 30 minute period. Transmissions from base stations shall be limited to a total time of one second every minute. The FCC shall coordinate applications for base stations operating on this frequency with NTIA. Applicants shall perform an analysis for each base station located within 169 km (105 miles) of a TV Channel 7 transmitter of potential interference to TV Channel 7 viewers. Such stations will be authorized if the applicant has limited the interference

contour to fewer than 100 residences or if the applicant:

* * * * *

■ 5. Section 90.35 is amended by removing the entry for the frequency bands ''406 to 413'' and adding in its place the entry for ''406 to 416'' to the table in paragraph (b)(3) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(3) *Frequencies.*

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* *	* *	* *	* *
Megahertz			
* *	* *	* *	* *
406 to 416	Operational fixed	53	
* *	* *	* *	* *

* * * * *

■ 6. Section 90.203 is amended by revising paragraphs (j) introductory text, (j)(3), (j)(4) introductory text, (j)(5), and (j)(7) to read as follows:

§ 90.203 Certification required.

* * * * *

(j) Except where otherwise specially provided for, transmitters operating on frequencies in the 150–174 MHz and 406–512 MHz bands must comply with the following:

* * * * *

(3) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150.8–162.0125 MHz, 173.2–173.4 MHz, and/or 421–512 MHz bands, received on or after February 14, 1997, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

(4) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150.8–162.0125 MHz, 173.2–173.4 MHz, and/or 421–512 MHz bands, received on or after January 1, 2005, except for hand-held transmitters with an output power of two watts or less, will only be granted for equipment with the following channel bandwidths:

* * * * *

(5) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150.8–162.0125 MHz, 173.2–173.4 MHz, and/or 421–512 MHz bands, received on or after January 1, 2005, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

* * * * *

(7) All transmitters that are designed for one-way paging operations, except those operating on the frequency 163.250 MHz, will be certified with a 25 kHz channel bandwidth and are exempt from the spectrum efficiency requirements of paragraphs (j)(3) and (j)(5) of this section.

* * * * *

■ 7. Section 90.209 is amended by removing the entry for the frequency band ''421–512'' and adding in its place the entry for ''406–512'' to the table in paragraph (b)(5) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(5) * * *

STANDARD CHANNEL SPACING BANDWIDTH

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
* *	*	*
406–512 [2]	[1] 6.25	[13] 20/11.25/6
* *	*	*

* * * * *

■ 8. Section 90.217 is amended by adding paragraph (e) to read as follows:

§ 90.217 Exemption from technical standards.

* * * * *

(e) Transmitters used for wireless microphone operations and operating on frequencies allocated for Federal use must comply with the requirements of § 90.265(b).

■ 9. Section 90.265 is amended by revising the section heading and paragraph (a) introductory text and the list of frequencies in paragraph (a), and by adding paragraphs (a)(5) through (a)(9), (c), (d), and (e) to read as follows:

§ 90.265 Assignment and use of frequencies in the bands allocated for Federal use.

(a) The following center frequencies are available for assignment to fixed stations in the Public Safety Pool or the Industrial/Business Pool, subject to the provisions of this section:

HYDRO CHANNELS (MHZ)

169.4250	170.2625	171.1000	406.1250
169.4375	170.2750	171.1125	406.1750
169.4500	170.2875	171.1250	412.6625
169.4625	170.3000	171.8250	412.6750
169.4750	170.3125	171.8375	412.6875
169.4875	170.3250	171.8500	412.7125
169.5000	171.0250	171.8625	412.7250
169.5125	171.0375	171.8750	412.7375
169.5250	171.0500	171.8875	412.7625
170.2250	171.0625	171.9000	412.7750
170.2375	171.0750	171.9125	415.1250
170.2500	171.0875	171.9250	415.1750

* * * * *

(5) After May 27, 2005, for the 169–172 MHz band and January 1, 2008 for the 406–416 MHz band, channels for new operations are limited to an authorized bandwidth not to exceed 11.25 kHz. After those dates, existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate with a bandwidth greater than 11.25 kHz until January 1, 2013. Such operations are limited by paragraphs (a)(6) and (a)(7) of this section.

(6) After May 27, 2005, if a licensee of a channel in the band 169–172 MHz which uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint to the satisfaction of an impacted Federal agency or is advised to do so by the Hydro Committee as approved by the FCC, then the licensee must cease operation on the frequency upon notification by the Commission.

(7) After January 1, 2008, if a licensee of a channel in the band 406.1–420 MHz which uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint to the satisfaction of an impacted Federal agency or is advised to do so by the Hydro Committee as approved by the FCC, then the licensee must cease operation on the frequency upon notification by the Commission.

(8) After May 27, 2005, new assignments on the frequencies 406.125 MHz and 406.175 MHz are to be primarily for paired operations with the frequencies 415.125 MHz and 415.175 MHz, respectively and limited to an authorized bandwidth not to exceed 11.25 kHz when paired.

(9) Existing stations may continue to use the center frequencies 169.575 MHz, 409.675 MHz, 409.725 MHz, and 412.625 MHz until January 1, 2013, subject to the requirements of paragraphs (a)(6) and (a)(7) of this section.

* * * * *

(c) The following center frequencies are available for assignment to licensees engaged in forest firefighting and conservation activities, subject to the provisions of this section:

FOREST FIREFIGHTING AND CONSERVATION CHANNELS (MHZ)

170.425	171.425	172.225
170.475	171.475	172.275
170.575	171.575	172.375

(1) These frequencies will be assigned on a secondary basis to any U.S. Government station.

(2) The frequencies 170.425 MHz, 170.475 MHz, 170.575 MHz, 171.425 MHz, 171.575 MHz, 172.225 MHz, and 172.275 MHz will be assigned only to licensees directly responsible for the prevention, detection, and suppression of forest fires.

(3) The frequencies 171.475 MHz and 172.275 MHz will be assigned to licensees directly responsible for the prevention, detection, and suppression of forest fires; or to licensees engaged in forest conservation activities for mobile relay operation only.

(4) The frequencies 170.425 MHz, 170.575 MHz, 171.475 MHz, 172.225 MHz, and 172.375 MHz will be assigned for use only in areas west of the Mississippi River.

(5) The frequencies 170.475 MHz, 171.425 MHz, 171.575 MHz, and 172.275 MHz will be assigned for use only in areas east of the Mississippi River.

(6) All applications for use of these frequencies must be accompanied by a letter of concurrence by the United States Department of Agriculture.

(7) After May 27, 2005, channels for new operations are limited to an authorized bandwidth not to exceed 11.25 kHz. Between May 27, 2005, and January 1, 2013, existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate with a bandwidth greater than 11.25 kHz, subject to the limitations set forth in paragraph (c)(8), of this section.

(8) After May 27, 2005, if a licensee that uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint from an impacted Federal agency, then the licensee must cease operation on the frequency upon notification by the Commission.

(d) The frequencies 166.250 MHz and 170.150 MHz are available for assignment to licensees engaged in public safety activities, subject to the provisions of this section:

(1) These frequencies are available for assignment to stations in the Public Safety Pool, only at points within 241.4 km. (150 mi.) of New York, N.Y.;

(2) Operations on these channels is on a secondary basis to any Federal station; and

(3) After May 27, 2005, if a licensee that uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint from an impacted Federal agency, then the licensee must cease operation on the frequency upon notification by the Commission.

(4) After May 27, 2005, channels for new operations are limited to an authorized bandwidth not to exceed 11.25 kHz. Between May 27, 2005, and

January 1, 2013, existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate with a bandwidth greater than 11.25 kHz, subject to the limitations set forth in paragraph (d)(3), of this section.

(e) The following frequencies are available for use by Medical Radiocommunication Systems:

(1) The frequencies 150.775 MHz, 150.790 MHz, and 163.250 MHz, subject to following provisions:

(i) After May 27, 2005, new assignments for these frequencies shall be authorized only for the purpose of delivering or rendering medical services to individuals (medical radiocommunication systems).

(ii) After May 27, 2005, new operations on the frequency 163.250 MHz are limited to an authorized bandwidth not to exceed 11.25 kHz.

(iii) After January 1, 2008, new operations on the frequencies 150.775 MHz and 150.790 MHz are limited to an authorized bandwidth not to exceed 11.25 kHz.

(iv) Existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate on a primary basis with a bandwidth greater than 11.25 kHz until January 1, 2013. After January 1, 2013, stations that use the frequencies 150.775 MHz, 150.790 MHz, or 163.250 MHz shall be limited to an authorized bandwidth not to exceed 11.25 kHz.

(2) The frequency 152.0075 MHz and frequencies within the bands 462.9375–463.1875 MHz and 467.9375 MHz–468.1875 MHz, subject to the limitations specified in § 90.20.

* * * * *

[FR Doc. 05–8338 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket Nos. 03–103, 05–42; FCC 04–287]

Air-Ground Telecommunications Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (''Commission'') published in the **Federal Register** of Wednesday, April 13, 2005, a document, wherein § 22.857 was incorrectly amended. This document corrects that amendment.

DATES: Effective May 13, 2005.

FOR FURTHER INFORMATION CONTACT: Richard Arsenault, Chief Counsel, Mobility Division, Wireless Telecommunications Bureau, at 202–418–0920 or via e-mail at *Richard.Arsenault@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a correction to the Commission's Report and Order portion (*Report and Order*) of the Commission's *Report and Order and Notice of Proposed Rulemaking*, FCC 04–287, in WT Docket Nos. 03–103 and 05–42, adopted December 15, 2004, and released February 22, 2005, as summarized and published at 70 FR 19293, April 13, 2005.

PART 22—[CORRECTED]

■ In FR Doc. 05–6948 published on April 13, 2005, (70 FR 19293) make the following correction:

■ On page 19310, in the first column, instruction 55 is corrected to read as follows:

■ 55. Revise § 22.857 to read as follows:

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–8340 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 27 and 90

[WT Docket No. 96–86; FCC 05–09]

Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission takes certain actions intended to conform certain technical rules governing the 764–776 MHz and 794–806 MHz public safety bands (700 MHz Public Safety Band) to industry consensus standards.

DATES: Effective May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Technical Information: Brian Marenco, *Brian.Marenco@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233. Legal Information: Roberto Mussenden, Esq., *Roberto.Mussenden@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TYY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is summary of the Federal Communications Commission's *Sixth Report and Order*, FCC 05–9, adopted January 5, 2005 and released on January 7, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://www.fc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov.*

1. In the *Sixth Report and Order*, the Commission takes the following actions:

- Changes the terminology used in Sections 90.543 and 27.53 of the Commission's rules from Adjacent Channel Coupled Power (ACCP) to Adjacent Channel Power (ACP); and
- Adopts recommended changes to the ACP limits in § 90.543 and 27.53 of the Commission's rules.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

2. The order does not contain any new or modified information collection.

B. Regulatory Flexibility Act

3. A Final Regulatory Flexibility Analysis has been prepared with respect to the *Sixth Report and Order* and is set forth below.

C. Report to Congress

4. The Commission will send a copy of this *Sixth Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

D. Supplemental Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Fifth Report and Order* in WT Docket 96–86. The Commission sought written public comment on the proposals in the *Fifth Notice of Proposed Rulemaking.*

E. Final Regulatory Flexibility Certification

6. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

7. In this *Sixth Report and Order*, we:

• Revise values in the emission limit tables set forth at 47 CFR 90.543 to ensure technological feasibility;

• Delete the column entitled ''Maximum ACCP (dbm)'' from the table governing ACCP requirements for mobile transmitter set forth at 47 CFR 90.543 because these values are inconsistent with the Commission's decision not to require mobile transmitters to utilize Automatic Power Control;

• Change the terminology ''Adjacent Channel Coupled Power'' to ''adjacent Channel Power'' in our Rules to align our rules with industry standards.

8. These changes, which are intended to ensure that the Commission's rules reflect the latest technical and industry standards, and to correct typographical or ministerial errors in the Commission's Rules, are exclusively of an administrative nature. The changes will not have a significant economic impact on small entities because they are technologically neutral and will affect all entities equally.

9. The Commission therefore certifies, pursuant to the RFA, that the rule changes contained proposals in this *Sixth Report and Order* will not have a significant economic impact on a substantial number of small entities.

10. The Commission will send a copy of the Final Analysis including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This certification will also be published in the **Federal Register**.

II. Ordering Clauses

11. Pursuant to Sections 4(i), 303(f), 332, 337 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 332, 337 and 405 this *Sixth Report and Order* is hereby adopted.

12. It is further ordered that the amendments of the Commission's Rules as set forth in Rule Changes are adopted May 27, 2005.

13. It is further ordered, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Sixth Report and Order* including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 27 and 90

Communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, 47 CFR parts 27 and 90 are amended as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 2. Paragraphs (d)(1), (2), (3), and (4) of § 27.53 are revised to read as follows:

§ 27.53 Emission limitations.

* * * * *

(d) * * *

(1) The adjacent channel power (ACP) requirements for transmitters designed for various channel sizes are shown in the following tables. Mobile station requirements apply to handheld, car mounted and control station units. The tables specify a value for the ACP as a function of the displacement from the channel center frequency and measurement bandwidth. In the following tables, ''(s)'' indicates a swept measurement may be used.

6.25 kHz Mobile Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
6.25	6.25	−40
12.5	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25.00	−65
62.50	25.00	−65
87.50	25.00	−65
150.00	100.00	−65
250.00	100.00	−65
350.00	100.00	−65
>400 kHz to 12 MHz	30(s)	−75
12 MHz to paired receive band	30(s)	−75
In the paired receive band	30(s)	−100

12.5 kHz Mobile Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.50	25.00	−60
62.50	25.00	−65
87.50	25.00	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 to 12 MHz	30(s)	−75
12 MHz to paired receive band	30(s)	−75
In the paired receive band	30(s)	−100

25 kHz Mobile Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
15.625	6.25	−40
21.875	6.25	−60
37.50	25	−60
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30(s)	−75

25 kHz Mobile Transmitter ACP Requirements—Continued

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
12 MHz to paired receive band	30(s)	−75
In the paired receive band	30(s)	−100

150 kHz Mobile Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP relative (dBc)
100	50	−40
200	50	−50
300	50	−50
400	50	−50
600–1000	30(s)	−60
1000 to receive band	30(s)	−70
In the receive band	30(s)	−100

6.25 kHz Base Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
6.25	6.25	−40
12.50	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25	−65
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30(s)	−80
12 MHz to paired receive band	30(s)	−80
In the paired receive band	30(s)	−100

12.5 kHz Base Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30(s)	−80
12 MHz to paired receive band	30(s)	−80
In the paired receive band	30(s)	−100

25 kHz Base Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
15.625	6.25	−40
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350	100.00	−65
>400 kHz to 12 MHz	30(s)	−80
12 MHz to paired receive band	30(s)	−80
In the paired receive band	30(s)	−100

150 kHz Base Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
100	50	−40
200	50	−50
300	50	−55
400	50	−60
600–1000	30(s)	−65
1000 to receive band	30(s)	−75 (continues at −6dB/oct

150 kHz Base Transmitter ACP Requirements—Continued

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
In the receive band	30(s)	−100

(2) *ACP measurement procedure.* The following procedures are to be followed for making ACP transmitter measurements. For time division multiple access (TDMA) systems, the measurements are to be made under TDMA operation only during time slots when the transmitter is on. All measurements must be made at the input to the transmitter's antenna. Measurement bandwidth used below implies an instrument that measures the power in many narrow bandwidths (*e.g.,* 300 Hz) and integrates these powers across a larger band to determine power in the measurement bandwidth.

(i) *Setting reference level.* Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth to the channel size. For example, for a 6.25 kHz transmitter, set the measurement bandwidth to 6.25 kHz; for a 150 kHz transmitter, set the measurement bandwidth to 150 kHz. Set the frequency offset of the measurement bandwidth to zero and adjust the center frequency of the spectrum analyzer to give the power level in the measurement bandwidth. Record this power level in dBm as the ''reference power level''.

(ii) *Non-swept power measurement.* Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth as shown in the tables above. Measure the ACP in dBm. These measurements should be made at maximum power. Calculate the coupled power by subtracting the measurements made in this step from the reference power measured in the previous step. The absolute ACP values must be less than the values given in the table for each condition above.

(iii) *Swept power measurement.* Set a spectrum analyzer to 30 kHz resolution bandwidth, 1 MHz video bandwidth and sample mode detection. Sweep ± MHz from the carrier frequency. Set the reference level to the RMS value of the transmitter power and note the absolute power. The response at frequencies greater than 600 kHz must be less than the values in the tables above.

(3) *Out-of-band emission limit.* On any frequency outside of the frequency ranges covered by the ACP tables in this section, the power of any emission must be reduced below the unmodulated

carrier power (P) by at least 43 + 10 log (P) dB.

(4) *Authorized bandwidth.* Provided that the ACP requirements of this section are met, applicants may request any authorized bandwidth that does not exceed the channel size.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 3. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 302(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 4. Section 90.543 is revised to read as follows:

§ 90.543 Emission limitations.

Transmitters designed to operate in 764 776 MHz and 794 806 MHz frequency bands must meet the emission limitations in this section.

(a) The adjacent channel power (ACP) requirements for transmitters designed for various channel sizes are shown in the following tables. Mobile station requirements apply to handheld, car mounted and control station units. The tables specify a value for the ACP as a function of the displacement from the channel center frequency and measurement bandwidth. In the following tables, ''(s)'' indicates a swept measurement may be used.

6.25 kHz Mobile Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP relative (dBc)
6.25	6.25	−40
12.5	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25.00	−65
62.50	25.00	−65
87.50	25.00	−65
150.00	100.00	−65
250.00	100.00	−65
350.00	100.00	−65
>400 kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100

12.5 kHz Mobile Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP relative (dBc)
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.50	25.00	−60
62.50	25.00	−65
87.50	25.00	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100

25 kHz Mobile Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP relative (dBc)
15.625	6.25	−40
21.875	6.25	−60
37.50	25	−60
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100

150 kHz Mobile Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
100	50	−40
200	50	−50
300	50	−50
400	50	−50
600–1000	30 (s)	−60
1000 to receive band	30 (s)	−70
In the receive band	30 (s)	−100

6.25 kHz Base Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
6.25	6.25	−40
12.50	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25	−65
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100

12.5 kHz Base Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100

25 kHz Base Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
15.625	6.25	−40
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350	100.00	−65
>400 kHz to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100

150 kHz Base Transmitter ACP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
100	50	−40
200	50	−50
300	50	−55
400	50	−60
600–1000	30 (s)	−65
1000 to receive band	30 (s)	−75 (continues at 6dB/oct)
In the receive band	30 (s)	−100

(b) *ACP measurement procedure.* The following are the procedures for making the transmitter ACP measurements. For all measurements modulate the transmitter as it would be modulated in normal operating conditions. For time division multiple access (TDMA) systems, the measurements are to be made under TDMA operation only during time slots when the transmitter is active. All measurements are made at the transmitter's output port. If a transmitter has an integral antenna, a suitable power coupling device shall be used to couple the RF signal to the measurement instrument. The coupling device shall substantially maintain the proper transmitter load impedance. The ACP measurements may be made with a spectrum analyzer capable of making direct ACP measurements. ''Measurement bandwidth'', as used for non-swept measurements, implies an instrument that measures the power in many narrow bandwidths equal to the nominal resolution bandwidth and integrates these powers to determine the total power in the specified measurement bandwidth.

(1) *Setting reference level.* Set transmitter to maximum output power. Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth to the channel size. For example, for a 6.25 kHz transmitter, set the measurement bandwidth to 6.25 kHz; for a 150 kHz transmitter, set the measurement bandwidth to 150 kHz. Set the frequency offset of the measurement bandwidth to zero and adjust the center frequency of the instrument to the assigned center frequency to measure the average power level of the transmitter. Record this power level in dBm as the ''reference power level''.

(2) *Non-swept power measurement.* Using a spectrum analyzer capable of ACP measurements, set the mesurement bandwidth and frequency offset from the assigned center frequency as shown in the tables in § 90.543 (a) above. Any value of resolution bandwidth may be used as long as it does not exceed 2 percent of the specified measurement bandwidth. Measure the power level in dBm. These measurements should be made at maximum power. Calculate ACP by substracting the reference power level measured in (b)(1) from the measurements made in this step. The absolute value of the calculated ACP must be greater than or equal to the absolute value of the ACP given in the table for each condition above.

(3) *Swept power measurement.* Set a spectrum analyzer to 30 kHz resolution bandwidth, 1 MHz video bandwidth and average, sample, or RMS detection. Set the reference level of the spectrum analyzer to the RMS value of the transmitter power. Sweep above and below the carrier frequency to the limits defined in the tables. Calculate ACP by substracting the reference power level measured in (b)(1) from the measurements made in this step. The absolute value of the calculated ACP must be greater than or equal to the absolute value of the ACP given in the table for each condition above.

(c) *Out-of-band emission limit.* On any frequency outside of the frequency ranges covered by the ACP tables in this section, the power of any emission must be reduced below the mean output power (P) by at least 43 + 10log (P) dB measured in a 100 kHz bandwidth for frequencies less than 1 GHz, and in a 1 MHz bandwidth for frequencies greater than 1 GHz.

(d) *Authorized bandwidth.* Provided that the ACP requirements of this section are met, applicants may request any authorized bandwidth that does not exceed the channel size.

(e) For operations in the 764 to 776 MHz and 794 to 806 MHz bands, all emissions including harmonics in the band 1559–1610 MHz shall be limited to −70 dBW/MHz equivalent isotropically radiated power (EIRP) for wideband signals, and −80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

(f) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

[FR Doc. 05–8205 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1023; MB Docket No. 04–316, RM–11047]

Radio Broadcasting Services; Morrison and Sparta, Tennessee

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Clear Channel Broadcasting Licenses, Inc., licensee of Station WRKK–FM, Channel 288A, Sparta, Tennessee, deletes Channel 288A at Sparta, Tennessee, from the FM Table of Allotments, allots Channel 287A at Morrison, Tennessee, as the community's first local FM service, and modifies the license of Station WRKK–FM to specify operation on Channel 287A at Morrison. Channel 287A can be allotted to Morrison, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.4 km (2.1 miles) northeast of Morrison. The coordinates for Channel 287A at Morrison, Tennessee, are 35–37–27 North Latitude and 85–53–37 West Longitude.

DATES: Effective May 23, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04–316,

adopted April 6, 2005, and released April 8, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Morrison, Channel 287A and by removing Sparta, Channel 288A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–8211 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1026; MB Docket No. 02–387; RM–10623]

Radio Broadcasting Services; Lahaina and Waianae, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 68 FR 2733 (January 21, 2003), this *Report and Order* reallots Channel 266C, FM Station KLHI, Lahaina, Hawaii, to Waianae, Hawaii, and modifies Station KLHI's license accordingly. The coordinates for Channel 266C at Waianae, Hawaii, are 21–23–51 NL and 158–06–01 WL, with a site restriction of 10.7 kilometers (6.6 miles) southeast of Waianae.

DATES: Effective May 23, 2005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–387, adopted April 6, 2005, and released April 8, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 266C1 at Lahaina, and adding Waianae, Channel 266A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–8210 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1022; MB Docket No. 04–240; RM–10843]

Radio Broadcasting Services; Daytona Beach Shores, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by Carmine Tutera requesting the allotment of Channel 258A at Daytona Beach Shores, Florida, as its first local service. *See* 69 FR 42957, published July 19, 2004. The coordinates for Channel 258A at Daytona Beach Shores are 29–15–06 NL and 81–02–29 WL. There is a site restriction 10.1 kilometers (6.3 miles) northwest of Daytona Beach Shores.

DATES: Effective May 23, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 04–240, adopted April 6, 2005, and released April 8, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Daytona Beach Shores, Channel 258A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–8208 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[FCC 05–81]

Implementation of SHVERA: Procedural Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts procedural rules in compliance with requirements in the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA). The Commission first prescribes rules for carriage elections on a county basis, unified retransmission consent negotiations, and notifications by satellite carriers to local broadcasters concerning carriage of significantly viewed signals. The Commission also revises the rules for satellite carriers' notices to station licensees when the carrier is going to initiate new local service. Finally, the Commission adopts a procedural rule which exempts satellite carriers from the signal testing requirements of section 339(c)(4) of the Communications Act of 1934, as amended, when local-into-local service is available.

DATES: Effective May 27, 2005, except for §§ 76.66(d)(2)(i), (ii) and 76.66(d)(5) which contain Paperwork Reduction Act requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Kenneth Lewis, Media Bureau, (202) 418–2622 or *Kenneth.lewis@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918 or via Internet at *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act of 1995 Analysis

This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this *Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due May 27, 2005, except for sections 76.66(d)(2) and 76.66(d)(5) which contain Paperwork Reduction Act requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we have not previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. However, this information collection does not affect businesses with fewer than 25 employees. Accordingly, there is no impact pursuant to the Small Business Paperwork Relief Act of 2002.

This is a synopsis of the Media Bureau's *Order* in FCC 05–81, adopted March 28, 2005, and released on March 30, 2005. The full text of this *Order* is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160.

Synopsis of Order

1. The Commission, in this *Order,* adopts procedural rules in compliance with requirements in the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA).[1] The SHVERA amends the 1988 copyright laws (17 U.S.C. 119 and 122) and the Communications Act of 1934, as amended (Act) to further aid competition in the multichannel video programming distribution market and provide more video programming options for satellite subscribers. The *Order* is one of several actions the Commission is taking to implement SHVERA. The other proceedings will follow according to timeframes set forth in the SHVERA, to be undertaken and largely completed in 2005.

2. The *Order* first implements procedural rule revisions required by section 340(h) of the Act. Section 202 of the SHVERA requires the Commission to add new section 340 of the Act, which provides for satellite carriage of ''significantly viewed'' broadcast signals.[2] Accordingly, in February 2005, the Commission adopted a *Notice of Proposed Rulemaking* to implement new section 340 of the Act. This decision may be found at 70 FR 11313, March 8, 2005. Section 340(h) prescribes rules for carriage elections on a county basis, unified retransmission consent negotiations, and notifications by satellite carriers to local broadcasters concerning carriage of significantly viewed signals.

3. Additionally, section 205 of the SHVERA amends section 338(h)(2) of the Act to add subsection 338(h) which instructs the Commission to amend § 76.66(d)(2) of the Commission's rules concerning satellite carrier notification to television broadcast stations in new local-into-local markets. The *Order,* as required by the SHVERA, mandates that the carrier's notice be sent to each station in a local market in which the carrier proposes to commence local-into-local service not later than 60 days before the local-into-local service will begin and also specifies the information that must be included in the notice and that the notice be sent via certified mail to the television station licensee's address listed in the Commission's consolidated database. The purpose is to ensure that notices clearly indicate to local broadcasters the rights and responsibilities that they have under the carry-one, carry-all provisions of the Act and Commission regulations.

4. Finally, section 209 of the SHVERA creates new section 339(c)(4)(D) of the Act, which requires that the Commission exempt satellite carriers from the signal testing requirements of section 339(c)(4)(A) of the Commission's rules when the request comes from a

[1] The SHVERA was enacted on December 8, 2004, as part of the Consolidated Appropriations Act of 2005, Public Law 108–447, section 202, 118 Stat. 2809 3393 (2004) (to be codified at 47 U.S.C. 340).

[2] The Commission, in 1972, adopted the concept of ''significantly viewed'' signals to differentiate between out-of-market television stations that ''have sufficient audience to be considered local and those that do not.'' The significantly viewed concept has applied to the cable industry for more than 30 years, and the SHVERA applies those rules to satellite providers. The designation is salient because it has enabled cable stations assigned to one market to be treated as ''local'' stations with respect to a particular cable community in another market.

satellite subscriber in a market in which local-into-local service is offered. The *Order* implements this change.

5. The Commission adopts these rule amendments without providing prior public notice and comment because these amendments merely implement the provisions of the SHVERA that direct the Commission to revise its rules as specified in the legislation. The Commission's action involves no discretion. Accordingly, notice and comment would serve no purpose and is thus unnecessary, and this action falls within the ''good cause'' exception of the Administrative Procedure Act.

6. The Commission will send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

7. Accordingly, *it is ordered* that pursuant to section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified as section 340(h) of the Communications Act of 1934, as amended, 47 U.S.C. 340(h), part 76.66(d)(5) is added as reflected in the rule changes portion of this document.

8. *It is further ordered* that pursuant to section 205 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified as section 338(h) of the Communications Act of 1934, as amended, 47 U.S.C. 338(h), part 76.66(d)(2) is amended as set forth in the rule changes portion of this document.

9. *It is further ordered* that pursuant to section 209 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified as section 339(c)(4)(D) of the Communications Act of 1934, as amended, 47 U.S.C. 339(c)(4)(D), section 73.683(f) is added as set forth in the rule changes portion of this document.

List of Subjects

47 CFR Part 73

Television.

47 CFR Part 76

Cable television, reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, parts 73 and 76 of Title 47 of the Code of Federal Regulations is revised to read as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Section 73.683 is amended by adding paragraph (f) to read as follows:

§ 73.683 Field strength contours and presumptive determination of field strength at individual locations.

* * * * *

(f) A satellite carrier is exempt from the verification requirements of 47 U.S.C. 339(c)(4)(A) with respect to a test requested by a satellite subscriber to whom the retransmission of the signals of local broadcast stations is available under 47 U.S.C. 338 from such carrier. The definitions of satellite carrier, subscriber, and local market contained in 47 CFR 76.66(a) apply to this paragraph (f).

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 3. The authority citation for part 76 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 4. Section 76.1 is amended by adding a sentence to the end of the paragraph to read as follows:

§ 76.1 Purpose.

* * * The rules and regulations in this part also describe broadcast carriage requirements for cable operators and satellite carriers.

■ 5. Sections 76.66 is amended by revising paragraphs (d)(2)(i) and (d)(2)(ii) and by adding paragraph (d)(5) to read as follows:

§ 76.66 New local-into-local service.

* * * * *

(d) * * *

(2) * * *

(i) A new satellite carrier or a satellite carrier providing local service in a market for the first time after July 1, 2001, shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage

(A) Of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;

(B) Of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

(C) That such licensee has 30 days from the date of the receipt of such notice to make such election; and

(D) That failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

(ii) Satellite carriers shall transmit the notices required by paragraph (d)(2)(i) of this section via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

* * * * *

(5) *Elections in Markets in which Significantly Viewed Signals are Carried.*

(i) Beginning with the election cycle described in § 76.66(c)(2), the retransmission of significantly viewed signals pursuant to § 76.54 by a satellite carrier that provides local-into-local service is subject to providing the notifications to stations in the market pursuant to paragraphs (d)(5)(i)(A) and (B) of this section, unless the satellite carrier was retransmitting such signals as of the date these notifications were due.

(A) In any local market in which a satellite carrier provided local-into-local service on December 8, 2004, at least 60 days prior to any date on which a station must make an election under paragraph (c) of this section, identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle and the communities into which the satellite carrier reserves the right to make such retransmissions;

(B) In any local market in which a satellite carrier commences local-into-local service after December 8, 2004, at least 60 days prior to the commencement of service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under § 76.66(c) or (d)(2), identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle.

(ii) A television broadcast station located in a market in which a satellite carrier provides local-into-local television service may elect either retransmission consent or mandatory

carriage for each county within the station's local market if the satellite carrier provided notice to the station, pursuant to paragraph (d)(5)(i) of this section, that it intends to carry during the next election cycle, or has been carrying on the date notification was due, in the station's local market another affiliate of the same network as a significantly viewed signal pursuant to § 76.54.

(iii) A television broadcast station that elects mandatory carriage for one or more counties in its market and elects retransmission consent for one or more other counties in its market pursuant to paragraph (d)(5)(ii) of this section shall conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.

(iv) A television broadcast station that receives a notification from a satellite carrier pursuant to paragraph (d)(5)(i) of this section with respect to an upcoming election cycle may choose either retransmission consent or mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

* * * * *

[FR Doc. 05–8202 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 96–86; FCC 05–9]

Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission takes certain actions intended to encourage the transition to narrowband technology in the 764–776 MHz and 794–806 MHz public safety bands (700 MHz Public Safety Band).

DATES: Effective May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Technical Information: Brian Marenco, *Brian.Marenco@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233. Legal Information: Roberto Mussenden, Esq., *Roberto.Mussenden@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Fifth Memorandum Opinion and Order*, FCC 05–9, adopted January 5, 2005 and released on January 7, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov*.

1. In the *Fifth Memorandum Opinion and Order*, the Commission takes the following actions:

- defers the ban on the marketing, manufacture and importation of equipment soley capable of utilizing 12.5 kHz bandwidth when operating in the voice mode in the 700 MHz Public Safety Band (12.5 kHz equipment) from December 31, 2006 until December 31, 2014; and
- defers the prohibition on filing applications for new systems that operate utilizing 12.5 kHz voice channels from December 31, 2006 until December 31, 2014.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

2. The order does not contain any new or modified information collection.

B. Regulatory Flexibility Act

3. A Supplemental Final Regulatory Flexibility Analysis with respect to the *Fifth Memorandum Opinion and Order* has been prepared and is set forth below.

C. Report to Congress

4. The Commission will send a copy of this *Fifth Memorandum Opinion and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

D. Supplemental Final Regulatory Flexibility Analysis

5. In view of the fact that the Commission has adopted further rule amendments in the *Fifth Memorandum Opinion and Order*, the Commission has included this Supplemental Final Regulatory Flexibility Analysis (SFRFA). This SFRFA conforms to the RFA. *Need for, and Objectives of the Fifth Memorandum Opinion and Order*:

6. The *Fifth Memorandum Opinion and Order* adopts rules to promote the transition to dual mode equipment and 6.25 kHz equipment in the 700 MHz Public Safety band operating in the General Use and State License channels. Specifically, we amend our rules to delay the ban on the marketing, manufacture, and importation of 12.5 kHz equipment until December 31, 2014. In addition, we amend our rules to delay until December 31, 2014, the cut-off for accepting applications for new systems operating in the General Use and State License channels that use 12.5 kHz equipment. These actions will effect a transition to a narrowband channel plan. The resulting gain in efficiency will ease congestion on the General Use and State License channels in these bands. Delaying this transition, however, will ease the economic burden on small businesses by allowing them to make this transition over a longer period of time.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA:

7. No comments or reply comments were filed in direct response to the FRFA. The Commission has, however, reviewed the general comments that may impact small businesses. Much of the potential impact on small businesses arises form the mandatory migration to 6.25 kHz or dual mode technology beginning on December 31, 2014; the ban on marketing, importation and manufacture of 12.5 kHz equipment after December 31, 2014; and the freeze on new 12.5 kHz applications. The costs associated with replacement of current systems were cited in opposition to mandatory conversion proposals.

Description and Estimate of the Number of Small Entities to Which the Rules Apply:

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business

Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. Below, we further describe and estimate the number of small entity licensees and regulates that may be effected by the proposed rules, if adopted.

9. *Governmental Entities*. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

10. *Public Safety Radio Licensees*. As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompass business entities engage in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services, we include under public safety services the number of government entities affected.

11. *Wireless Communications Equipment Manufacturers*. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small business.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

12. This *Fifth Memorandum Opinion and Order* adopts rules to promote the transition to dual mode equipment and 6.25 kHz equipment in the 700 MHz Public Safety band operating in the General Use and State License channels. Further, this *Fifth Memorandum Opinion and Order* amends our current rules to prohibit the marketing, importation or manufacture of 12.5 kHz-only equipment beginning on December 31, 2014. All equipment utilized in the 700 MHz Public Safety band on or after December 31, 2014 must utilize a maximum channel bandwidth of 6.25 kHz. These rules do not impose new reporting or recordkeeping requirements on licensees, but will require licensees to transition to new equipment. We have this transition as long as possible.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered:

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

14. The Commission considered the economic burden on small businesses when it adopted the rules set forth in the *Fifth Memorandum Opinion and Order*. For instance, in consideration of the amortization and life-space of current equipment and the resources available to small entities, we amend our Rules to delay until December 31, 2014 the cut-off for accepting applications for new systems operating in the General Use and State License channels that use 12.5 kHz equipment. In addition we amend our rules to delay until December 31, 2014 the prohibition on the marketing, manufacture and importation of 12.5 kHz equipment.

15. Exemption from coverage of the rule changes for small businesses would frustrate the purpose of the rule, *i.e.*, migration to more efficient spectrum use, and facilitate continued inefficient use of spectrum.

16. *Report to Congress:* The Commission will send a copy of this *Fifth Memorandum Opinion and Order*, including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Fifth Memorandum Opinion* and SFRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. 604(b).

II. Ordering Clauses

17. Pursuant to Sections 4(i), 303(f), 332, 337 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 332, 337 and 405 this *Fifth Memorandum Opinion and Order* is hereby adopted.

18. Pursuant to Sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by Motorola, Inc. on January 13, 2003, is granted to the extent described herein.

19. It is further order that the amendments of the Commission's Rules as set forth in Rule Changes are adopted May 27, 2005.

20. It is further ordered, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Fifth Memorandum Opinion and Order* including the Supplemental Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Rule Changes

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), 332(c)(7), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.203 is amended by revising paragraphs (m) and (n) to read as follows:

§ 90.203 Certification required.

* * * * *

(m) Applications for part 90 certification received after December 31, 2014 will only be granted to transmitters designed to operate in the voice mode on channels designated in § § 90.531.(b)(5) or 90.531(b)(6) that provide at least one voice path per 6.25 kHz of spectrum bandwidth.

(n) Transmitters designed to operate in the voice mode on channels designated in § § 90.531(b)(5) or 90.531(b)(6) that do not provide at least one voice path per 6.25 kHz of spectrum bandwidth shall not be manufactured in, or imported into the United States after December 31, 2014. Marketing of these transmitters shall not be permitted after December 31, 2014.

■ 3. Section 90.535 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 90.535 Modulation and spectrum usage effeciency requirements.

* * * * *

(d) * * *

(1) With the exception of licensees designated in paragraph (d)(2) of this section, after December 31, 2014, licensees may only operate in voice mode in these channels at a voice efficiency of at least one voice path per 6.25 kHz of spectrum bandwidth.

(2) Licensees authorized to operate systems in the voice mode on these channels from applications filed on or before December 31, 2014, may continue operating in voice mode on these channels (including modification applications of such licenses granted after December 31, 2014, for expansion or maintenance of such systems) at a voice efficiency of at least one voice path per 12.5 kHz of spectrum bandwidth until December 31, 2016.

* * * * *

[FR Doc. 05–8204 Filed 4–26–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 050303056-5108-02; I.D. 020205F]

RIN 0648–AT07

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; fishing season notification.

SUMMARY: This rule establishes the second and third trimester season quotas for large coastal sharks (LCS); small coastal sharks (SCS); and pelagic, blue, and porbeagle sharks based on over- or underharvests from the 2004 second semi-annual season. In addition, this rule establishes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. This action could affect all commercial fishermen in the Atlantic commercial shark fishery. This action is necessary to ensure that the landings quotas in the Atlantic commercial shark fishery represent the latest landings data.

DATES: This rule is effective May 1, 2005 through December 31, 2005. The Atlantic commercial shark fishing season opening and closing dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: For copies of this rule, write to Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Copies are also available on the internet at *http://www.nmfs.noaa.gov/sfa/hms*.

FOR FURTHER INFORMATION CONTACT: Chris Rilling, Karyl Brewster-Geisz, or Mike Clark by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Opening and Closing Dates and Quotas

TABLE 1—OPENING AND CLOSING DATES AND QUOTAS

Species Group	Region	Opening Date	Closing Date	Quota
Second Trimester Season				
Large Coastal Sharks	Gulf of Mexico	July 6, 2005	July 23, 2005 11:30 p.m. local time	147.8 mt dw (325,839 lb dw)
	South Atlantic		August 31, 2005 11:30 p.m. local time	182.0 mt dw (401,237 lb dw)
	North Atlantic	July 21, 2005		65.2 mt dw (143,739 lb dw)
Small Coastal Sharks	Gulf of Mexico	May 1, 2005	To be determined, as necessary[1]	30.5 mt dw (67,240 lb dw)
	South Atlantic			281.3 mt dw (620,153 lb dw)
	North Atlantic			23.0 mt dw (50,706 lb dw)
Blue sharks	No regional quotas	May 1, 2005	To be determined, as necessary[1]	91.0 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)
Third Trimester Season				
Large Coastal Sharks	Gulf of Mexico	September 1, 2005	October 31, 2005 11:30 p.m. local time	167.7 mt dw (369,711 lb dw)

TABLE 1—OPENING AND CLOSING DATES AND QUOTAS—Continued

Species Group	Region	Opening Date	Closing Date	Quota
	South Atlantic		November 15, 2005 11:30 p.m. local time	187.5 mt dw (413,362 lb dw)
	North Atlantic		September 15, 2005 11:30 p.m. local time	4.8 mt dw (10,582 lb dw)
Small Coastal Sharks	Gulf of Mexico	September 1, 2005	To be determined, as necessary[1]	31.7 mt dw (69,885 lb dw)
	South Atlantic			201.0 mt dw (443,345 lb dw)
	North Atlantic			15.9 mt dw (35,053 lb dw)
Blue sharks	No regional quotas	September 1, 2005	To be determined, as necessary[1]	91.0 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)

[1]When necessary, the closing date will be established and a notification will be published in the *Federal Register*.

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999, and Amendment 1 to the HMS FMP, finalized in 2003, are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS published a final rule (68 FR 74746) for Amendment 1 to the HMS FMP that established, among other things, the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw) and the 2004 annual landings quota for SCS at 454 mt dw. The final rule also established regional LCS and SCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the west coast of Florida), South Atlantic (east coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The LCS and SCS quotas were split among the three regions based upon historic landings.

On November 30, 2004, NMFS published a final rule (69 FR 69537) that adjusted the 2005 regional quotas for LCS and SCS based on updated landings information, divided the quotas among the three trimester seasons, established a method of accounting for over- or underharvests in the transition from semi-annual to trimester seasons, and implemented a new process for notifying participants of season opening and closing dates and quotas.

The 2004 final rule divided the LCS quota among the three regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic. The SCS quota was split among the three regions as follows: 10 percent to the Gulf of Mexico, 88 percent to the South Atlantic, and 2 percent to the North Atlantic. The regional quotas for LCS and SCS were divided equally between the trimester seasons in the South Atlantic and the Gulf of Mexico, and according to historical landings in the North Atlantic. The quotas were divided in this manner because sharks are available throughout much of the year in the Gulf of Mexico and South Atlantic regions, but primarily during the summer months in the North Atlantic region. Dividing the quota according to historical landings in the North Atlantic provided that region with a better opportunity to harvest its regional quota.

The final rule also established a method of dividing any over- or underharvests from the 2004 first semi-annual season equally between the 2005 first and second trimester seasons, and any over- or underharvest from the 2004 second semi-annual season equally between the 2005 second and third trimester seasons. This was done, in part, to make a larger portion of the quota available to fishermen during the second and third trimester seasons when the time/area closure off North Carolina will no longer be in effect.

The 2004 final rule established a process of issuing proposed and final rules for notification of season lengths and quotas to facilitate public comment. This final rule serves as notification of season lengths and quotas pursuant to 50 CFR 635.27(b)(1)(iii). This action does not change the 2005 base landings quota or the 2005 regional quotas established in the November 30, 2004, final rule (69 FR 69537).

NMFS issued a proposed rule on March 10, 2005 (70 FR 11922), to adjust regional quotas based on over- or underharvests from the 2004 season and to establish the second and third trimester season opening and closing dates.

Response to Comments

Comments on the March 2005 proposed rule received during the public comment period are summarized below, together with NMFS' responses.

Comment 1: NMFS received several comments regarding the proposed second trimester season opening dates. Commenters indicated a preference for a number of different opening dates including May 1, July 1, and July 6. All of the commenters expressed a preference for a particular date due to a combination of potential shark availability, marketing concerns, other fishery openings and closings such as lobster and grouper, and other economic considerations.

Response: NMFS has selected July 6 as the opening date for the second trimester LCS season in the Gulf of Mexico and South Atlantic regions, and

July 21 as the opening date for the North Atlantic region. The LCS season was postponed from the May 1 start date in order to protect sharks during the pupping season and to ensure availability of quota for North Carolina fishermen after the reopening of the time/area closure on August 1, 2005. The shark pupping season occurs from March through September in the Atlantic Ocean and the Gulf of Mexico with a peak from May through June. The LCS fishery has usually been closed for at least some of the time during these peak pupping months to reduce the likelihood of interactions with juvenile and reproductive female sharks. Additionally, if NMFS were to open the season on May 1, it is likely that the South Atlantic regional quota would have been harvested prior to the reopening of the time/area closure off North Carolina. Although July 1 has historically been the start of the second semi-annual season, NMFS received several comments that a season opening date of July 6 would improve marketing opportunities because it does not conflict with the Fourth of July holiday. Commenters pointed out that a July 6 season start date would prevent a glut of shark product on the market prior to the Fourth of July holiday when the market for sharks has historically been low. Thus, NMFS believes that the July 6 start date for the second trimester LCS season in the South Atlantic and Gulf of Mexico regions strikes a balance between the various competing interests based on shark availability, pupping concerns, and equitable distribution of the quota. The start date of July 21 for the North Atlantic region will allow that region's second and third trimester seasons to run consecutively.

Comment 2: The proposed opening date of September 1 for the third trimester season in the Gulf of Mexico will allow fishing when there are virtually no sharks to catch, with the exception of migrating dusky sharks. This is a prohibited species that will no doubt be caught and discarded if there is any fishing effort in the Gulf of Mexico during this time.

Response: NMFS does not anticipate that there will be excessive catch and discard of prohibited shark species. However the likelihood of catching prohibited species always exists, and NMFS will monitor landings and discards closely in order to determine whether the discard of prohibited shark species is excessive. Vessels will be selected for observer coverage, and through the observers, NMFS will be able to determine during the season if the third trimester season is resulting in excessive prohibited species interactions. Before the 2006 third season, NMFS will also use logbook reports to further verify whether or not opening at that time caused excessive prohibited species interactions.

Comment 3: Catching sharks should be totally banned. If not totally banned, then shark quotas should be cut by 50 percent this year, and by 10 percent every year after that.

Response: NMFS does not believe that banning all shark fishing is warranted for the following reasons: a number of businesses, including fishermen, processors, suppliers, and dealers could be forced out of business and a number of communities, including recreational fishing communities, would be adversely affected. In addition, the current rebuilding plan implemented in 2003 reduced the LCS quotas by 41 percent from 1,714 to 1,017 mt dw, to ensure a sustainable fishery and viable Atlantic shark populations in compliance with the requirements of the Magnuson-Stevens Act and other domestic laws.

Comment 4: NMFS should implement a more frequent reporting system for Atlantic shark landings. Reporting every week, as opposed to the current two-week reporting period, would help improve monitoring catch rates during the season.

Response: NMFS may consider shortening the reporting period in the future. However, prior to taking such an action, NMFS would need to conduct additional analyses, including an opportunity for public notice and comment as required by the Paperwork Reduction Act (PRA). Since shortening the reporting period would increase the reporting burden on seafood dealers, NMFS would need to amend the current regulations as well as the information collection approved by the Office of Management and Budget pursuant to the PRA. Even if the reporting period were shortened, NMFS would likely continue to establish the commercial shark fishing seasons in advance of the season to avoid overharvests.

Comment 5: NMFS should shorten the third trimester season in the South Atlantic by approximately one month to avoid an overharvest.

Response: NMFS agrees that there is the possibility that catch rates in late October or early November could increase, potentially resulting in an overharvest. As a result, NMFS will take the precautionary step of closing the third trimester season in the South Atlantic on November 15. Any over- or underharvest will be counted against or added to the South Atlantic quota during the third season of 2006.

Comment 6: NMFS should consider opening the first trimester season in February rather than January, because sharks are typically not available until that time.

Response: NMFS will consider postponing the opening date in all regions for the 2006 first trimester season in a proposed rule to be published later this year in the **Federal Register**.

Comment 7: There are enormous numbers of spiny dogfish and something must be done to manage them.

Response: Spiny dogfish are currently managed jointly by the Mid-Atlantic and New England Fishery Management Councils. Any comments on that FMP should be submitted to those Councils.

Changes From the Proposed Rule (March 10, 2005, 70 FR 11922)

In the proposed rule, NMFS considered opening the LCS second trimester season in the Gulf of Mexico on August 1, in the South Atlantic on July 1, and in the North Atlantic on July 15. NMFS considered delaying the start of the second season from May 1 in order to reduce the likelihood of interactions during shark pupping periods, and to allow the available quota to be harvested by the beginning of the third trimester season. Delaying the start of the second trimester season would have allowed the second and third trimester seasons to run consecutively. This would have prevented the need for a closure of the LCS fishery between the second and third trimester seasons and could have helped minimize disruption to fishery participants in the transition from semi-annual to trimester seasons. After considering public comments, NMFS has decided to change the season opening date for the Gulf of Mexico from August 1 to July 6, and the South Atlantic season opening date from July 1 to July 6. NMFS received several comments that a July 6 opening date in both regions would improve marketing opportunities because it does not conflict with the Fourth of July holiday. Many fishermen indicated that sharks are available in July, but not in August, and that an opening date of August 1 would have had negative economic impacts on fishermen in the Gulf of Mexico as a result. Fishermen also noted that the lobster fishery opens on August 1, and that opening the shark season on the same date would have prevented them from participating in either the shark or the lobster fishery, thus creating further economic hardship on fishermen who rely on revenues from both fisheries. Since the fishery has historically opened on July 1, NMFS

does not believe there will be any negative ecological or economic impacts as a result of this change. Since the season will now begin on July 6, and catch rates have historically been higher in July than August however, the season in the Gulf of Mexico will need to be shortened. Consequently, the second and third trimester seasons in the Gulf of Mexico will not run consecutively.

For the North Atlantic region, recent updates to landings information indicated higher landings that required delaying the start of the second trimester season one week from July 15 to July 21. This will allow the second and third trimester seasons to run consecutively from July 21 to August 31, 2005, and from September 1 to September 15, 2005, respectively, without overharvesting the quota.

In the proposed rule, NMFS considered a closing date of December 15 for the South Atlantic region. After considering public comments, NMFS has decided to establish a closing date of November 15. There has historically been no commercial shark fishery in October or November, and NMFS thus estimated the closing date in the proposed rule based on the available quota and historic catch rates during August and September. Fishermen indicated that there is a likelihood of an increased harvest of LCS during October and November, and that leaving the fishery open until December 15 could have resulted in an overharvest. Thus, NMFS opted for a precautionary approach of an earlier closing date. In the event that the quota is not caught during this period, NMFS may consider a longer season in the future.

Available Quotas

The calculations and details for establishing the regional quotas are described in the proposed rule (March 10, 2005, 70 FR 11922) and are not repeated here. For the Gulf of Mexico, the final LCS quotas for the second and third trimester seasons are 147.8 and 167.7 mt dw, respectively, and the final SCS quotas for the second and third trimester seasons are 30.5 and 31.7 mt dw, respectively.

For the South Atlantic, the final LCS quotas for the second and third trimester seasons are 182.0 and 187.5 mt dw, respectively, and the final SCS quotas for the second and third trimester seasons are 281.3 and 201.0 mt dw, respectively.

For the North Atlantic, the final LCS quotas for the second and third trimester seasons are 65.2 and 4.8 mt dw, respectively, and the final SCS quotas for the second and third trimester seasons are 23.0 and 15.9 mt dw, respectively.

The 2005 second and third trimester quotas for pelagic (other than blue and porbeagle), blue, and porbeagle sharks are established at 162.7 mt dw (358,688 lb dw), 91.0 mt dw (200,619 lb dw), and 30.7 mt dw (67,681 lb dw), respectively.

Fishing Season Notification for the Second Season

The second trimester fishing season of the 2005 fishing year for LCS will open on July 6, 2005, in the South Atlantic and Gulf of Mexico regions, and on July 21, 2005, in the North Atlantic region. The second trimester season LCS fishery will close on July 23, 2005, at 11:30 p.m. local time in the Gulf of Mexico, and on August 31, 2005, at 11:59 p.m. local time in the South Atlantic and North Atlantic regions.

The second trimester fishing season of the 2005 fishing year for SCS, pelagic sharks, blue sharks, and porbeagle sharks in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on May 1, 2005. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the Assistant Administrator (AA) will file notification of closures at the Office of **Federal Register** at least 14 days before the effective date, as consistent with 50 CFR 635.28(b)(2).

To estimate the LCS fishery opening and closing dates for the second season, NMFS calculated the average reported catch rates for each region from the second semi-annual season in recent years (2000–2004). These catch rates were used to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period.

Consistent with 50 CFR 635.27(b)(1)(vi), any over- or underharvests in one region will result in an equivalent increase or decrease in the following year's quota for that region.

Because state landings during a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received during the Federal closure dates of the years used to estimate catch rates.

Pursuant to 50 CFR 635.5(b)(1)(iii), shark dealers must report any sharks received twice a month. More specifically, sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to NMFS by the 10th of the following month. Thus, in order to simplify dealer reporting and aid in managing the fishery, in recent years NMFS has opened and closed the Federal LCS fishery on either the 15th or the end of any given month. However, based on available quota, historic catch rates, and the recent change counting state landings against the quota, NMFS has decided to allow the Gulf of Mexico LCS fishery to remain open for 18 days during the second trimester season, rather than the usual two or four weeks. An 18-day season will allow the quota to be harvested without exceeding the quota. A two-week season would only have allowed 75 percent of the quota to be harvested.

Based on average LCS catch rates in recent years (2000–2004) for the Gulf of Mexico region, approximately 92 percent of the available second trimester LCS quota (148.0 mt dw) would likely be taken in 18 days and 108 percent of the available LCS quota would likely be taken in three weeks. Dealer data also indicate that, on average, approximately 6.5 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 4 percent of the available quota. If catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 96 percent (92 + 4 percent) of the second trimester quota could be caught if the season were open for 18 days, and 112 percent (108 + 4) of the quota could be caught if the season were open for three weeks. If the fishery were to remain open for three weeks, the quota would likely be exceeded. Thus, the LCS fishery in the Gulf of Mexico region will open on July 6, 2005, and close at 11:30 p.m. on July 23, 2005.

Based on average LCS catch rates in recent years (2000–2004) for the South Atlantic region, and accounting for reduction in effort due to the time/area closure off North Carolina, approximately 89 percent of the available second trimester LCS quota (182.0 mt dw) would likely be taken in eight weeks and 107 percent of the available LCS quota would likely be taken in nine weeks. Dealer data also indicate that, on average, approximately 17 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 9 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 98 percent (89 percent + 9 percent) of the quota could be caught in eight weeks, and 116 percent (107 percent + 9 percent) of the quota could be caught in nine weeks. Thus, in order for the second and third trimester seasons to run consecutively without exceeding the quota during the second trimester

season, the LCS fishery in the South Atlantic will open on July 6, 2005, and close at 11:59 p.m. on August 31, 2005.

Based on average LCS catch rates in recent years (2000–2004) for the North Atlantic region, approximately 80 percent of the available second trimester LCS quota (65.2 mt dw) would likely be taken in five weeks and 89 percent of the available LCS quota would likely be taken in six weeks. Dealer data also indicate that, on average, approximately 12 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 18 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 98 percent (80 + 18 percent) of the quota could be caught in five weeks, and 107 percent (89 percent + 18 percent) in six weeks. Thus, allowing the fishery to stay open for six weeks could result in an overharvest. In order for the second and third trimester seasons to run consecutively without exceeding the quota during the second trimester season, the North Atlantic will open on July 21, 2005 and close at 11:59 p.m. on August 31, 2005.

Fishing Season Notification for the Third Season

The third trimester fishing season of the 2005 fishing year for LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on September 1, 2005. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closures at the Office of **Federal Register** at least 14 days before the effective date, as consistent with 50 CFR 635.28(b)(2).

NMFS will close the third trimester season LCS fishery in the North Atlantic on September 15, 2005, at 11:30 p.m. local time, in the Gulf of Mexico on October 31, 2005, at 11:30 p.m. local time, and in the South Atlantic on November 15, 2005, at 11:30 p.m. local time.

Since the LCS fishery has historically been closed during much of the third trimester period, NMFS used average LCS catch rates from August and September in recent years (2000–2004) to estimate the third trimester season catch rates and closure dates for each of the regions. NMFS used this precautionary approach of averaging catch rates from August and September because of the potential for higher effort in September than has been observed in the past, and to reduce the likelihood of an overharvest. Using catch rates from August alone may not be appropriate because catch rates during that month have been higher historically than during September, and because it does not fall within the third trimester season. However, using catch rates from September alone may also not be appropriate because of the lack of data during that month. Hence, NMFS used the average of the two-month catch rates.

In the Gulf of Mexico, approximately 79 percent of the available third trimester LCS quota (167.8 mt dw) would likely be taken by the end of October and 99 percent of the available LCS quota would likely be taken by the second week of November. Dealer data also indicate that, on average, approximately 6.5 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 4 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 82 percent (79 percent + 4 percent) of the quota could be caught by the end of October. If the fishery were to remain open until the second week of November, the quota would likely be exceeded (99 percent + 4 percent = 103 percent). Accordingly, NMFS will close the Gulf of Mexico LCS fishery on October 31, 2005, at 11:30 p.m. local time.

In the South Atlantic, approximately 86 percent of the available third trimester LCS quota (187.5 mt dw) would likely be taken by the second week of December and 98 percent of the available LCS quota would likely be taken by the end of December. Dealer data also indicate that, on average, approximately 18 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 10 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 96 percent (86 percent + 10 percent) of the quota could be caught by the second week of December. If the fishery were to remain open until the end of December, the quota would likely be exceeded (98 percent + 10 percent = 108 percent). However, since publishing the proposed rule (March 10, 2005, 70 FR 11922), NMFS has received comments from fishermen with historical knowledge of the fishery that landings may actually increase in late October or early November. As a precautionary step to avoid an overharvest, NMFS will close the South Atlantic LCS fishery on November 15, 2005, at 11:30 p.m. local time.

In the North Atlantic region, approximately 70 percent of the available third trimester LCS quota (4.8 mt dw) would likely be taken by the second week of September and 140 percent of the available LCS quota would likely be taken by the end of September. Dealer data also indicate that, on average, approximately 7 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 138 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 210 percent (70 percent + 140 percent) of the quota could be caught by the second week of September. Accordingly, NMFS will close the North Atlantic LCS fishery on September 15, 2005, at 11:30 p.m. local time. This is the shortest season duration that NMFS believes is reasonable to ensure harvest of the 4.8 mt dw quota. Although the percentage overharvest ms high, the actual landings during a Federal closure in the North Atlantic (7 mt dw) are low compared to the overall LCS quota (<1 percent), and NMFS does not believe that this would have a negative ecological impact on the LCS rebuilding plan.

Classification

The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities.

The factual basis for this certification was published in the proposed rule. No comments were received regarding the economic impact of this rule. As a result, no Final Regulatory Flexibility Act analysis was prepared. This final rule will not increase overall quotas, landings or regional percentages for LCS or SCS, implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions.

The AA finds that good cause exists to waive the 30-day delay in effective date for the May 1, 2005, start of the second trimester fishing season for SCS, pelagic, blue, and porbeagle shark fisheries. NMFS received updated landings reports for the first and second 2004 fishing seasons on February 17, 2005. These data were necessary for making over- or underharvest adjustments to the quotas consistent with 50 CFR 635.27(b)(1)(vi). Although preliminary reports from earlier reporting periods were available, NMFS needed to obtain the most recent landings data available to establish appropriate quotas and season lengths based on the best available information for the 2005 second and third trimester

seasons. The February 17, 2005, report on commercial shark landings was the first report received from dealers since the end of the 2004 second semi-annual season, as well as the first report received for the 2005 first trimester season. If the 30-day delay in effective date is not waived, then commercial fishermen in the SCS, pelagic, blue, and porbeagle shark fisheries will not be able to fish on May 1, 2005. Not allowing them to fish for these species, which are not overfished and are not at risk of an overharvest, would have negative economic impacts. Negative economic impacts would include elimination of all shark landings during a time in which fishermen have historically been allowed to fish, loss of anticipated revenues, marketing opportunities, predictability in the supply and availability of shark products, and general disruption to the Atlantic commercial shark fishery. Since the LCS commercial fishing season has been shortened in recent years to adjust for lower LCS landings quotas, fishermen have come to rely on landings of SCS, pelagic, blue, and porbeagle sharks during times when the LCS fishery is closed. Not allowing the fishery to remain open during this period would likely result in fishermen having to target other species, switch to new gears, or leave the fishery entirely. Other provisions of this final rule, including the opening dates for LCS, would have a 30-day delay in effectiveness from the date of publication of this rule. Accordingly, pursuant to 5 U.S.C. 553(d)(1), a delay in effective date is waived for the above-referenced May 1, 2005, start date.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal zone management (CZM) programs of coastal states in the Atlantic, Gulf of Mexico, and Caribbean. NMFS asked for states concurrence with this determination during the proposed rule stage. Three states replied affirmatively regarding the consistency determination, and one state (Texas) indicated that its CZM program no longer issues consistency determinations for federally managed fishing activities. NMFS presumes that the remaining states that have not yet responded concur with the determination.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: April 22, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–8443 Filed 4–22–05; 4:31 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 042105C]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to allow the deep-water species fisheries by vessels using trawl gear in the GOA to resume.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 24, 2005, through 1200 hrs, A.l.t., July 5, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the GOA under § 679.21(d)(7)(i) on April 8, 2005 (70 FR 19338, April 13, 2005).

NMFS has determined that approximately 60 metric tons of halibut remain in the second seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the deep-water species fisheries by vessels using trawl gear in the GOA to resume, NMFS is terminating the previous closure and is reopening directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the GOA. The reopening is effective 1200 hrs, Alaska local time (A.l.t.), April 24, 2005, through 1200 hrs, A.l.t., July 5, 2005. The species and species groups that comprise the deep-water species fishery are all rockfish of the genera *Sebastes* and *Sebastolobus*, deep-water flatfish, rex sole, arrowtooth flounder, and sablefish.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the delay the opening of the fishery, not allow the full utilization of the species and species groups that comprise the deep-water species fisheries, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 22, 2005.

Galen R. Tromble

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–8448 Filed 4–22–05; 4:10 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 80
Wednesday, April 27, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 04–082–1]

Importation of Christmas Cactus and Easter Cactus in Growing Media From the Netherlands and Denmark

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of plants and plant products to add Christmas cactus, *Schlumbergera* spp., and Easter cactus, *Rhipsalidopsis* spp., from the Netherlands and Denmark to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. We are taking this action in response to requests from the Netherlands and Denmark and after determining that Christmas cactus and Easter cactus established in growing media can be imported without resulting in the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. The proposed change would allow Christmas cactus and Easter cactus established in growing media to be imported into the United States from the Netherlands and Denmark under certain conditions.

DATES: We will consider all comments that we receive on or before June 27, 2005.

ADDRESSES: You may submit comments by any of the following methods:

• *EDOCKET:* Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.

• *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04–082–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–082–1.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Arnold T. Tschanz, Senior Staff Officer, Regulatory Coordination Staff, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–5306.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds. The regulations in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations) contain, among other things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation.

Paragraph (a) of § 319.37–8 of the regulations requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate that plant pest risk. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37–8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media, inspections, and other requirements (paragraph (e)).

Paragraph (e) of § 319.37–8 provides conditions under which certain plants may be imported into the United States established in growing media. In addition to specifying the types of plants that may be imported, § 319.37–8(e) also:

• Specifies the types of growing media that may be used;

• Requires plants to be grown in accordance with written agreements between APHIS and the plant protection service of the country where the plants are grown and between the foreign plant protection service and the grower;

• Requires the plants to be rooted and grown in a greenhouse that meets certain requirements for pest exclusion and that is used only for plants being grown in compliance with § 319.37–8(e);

• Restricts the source of the seeds or parent plants used to produce the plants, and requires grow-out or treatment of parent plants imported into the exporting country from another country;

• Specifies the sources of water that may be used on the plants, the height of the benches on which the plants must be grown, and the conditions under which the plants must be stored and packaged; and

• Requires that the plants be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

A phytosanitary certificate issued by the plant protection service of the country in which the plants were grown that declares that the above conditions have been met must accompany the plants at the time of importation. These conditions have been used successfully to mitigate the risk of pest introduction associated with the importation into the

United States of approved plants established in growing media.

The regulations currently allow the importation of Christmas cactus, *Schlumbergera* spp., and Easter cactus, *Rhipsalidopsis* spp., from all countries of the world, provided that the plants are (1) free of sand, soil, earth, and other growing media, (2) accompanied by phytosanitary certificate of inspection, (3) imported under a permit issued by the Animal and Plant Health Inspection Service (APHIS), and (4) imported into a Federal plant inspection station listed in § 319.37–14(b), where they are subject to inspection by APHIS. Such plants are imported bare-rooted into the United States, and are rooted and potted for sale by U.S. nurseries.

In 1994, the governments of the Netherlands and Denmark requested that APHIS consider amending the regulations to allow Christmas cactus, *Schlumbergera* spp., and Easter cactus, *Rhipsalidopsis* spp., to be imported into the United States under the provisions of § 319.37–8(e). These countries currently export bare-root Cactaceae plants to the United States.

The regulations in § 319.37–8(g) provide that requests such as those made by the Netherlands and Denmark will be evaluated by APHIS using specific pest risk evaluation standards that are based on pest risk analysis guidelines established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization. Such analyses are conducted to determine the plant pest risks associated with each requested plant article and to determine whether or not APHIS should propose to allow the requested plant article established in growing media to be imported into the United States.

In accordance with § 319.37–8(g), APHIS has conducted the required pest risk analyses. The pest risk analyses may be viewed on the EDOCKET Web site (see **ADDRESSES** above for instructions for accessing EDOCKET). Copies of the pest risk analyses may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

In the pest risk analysis titled, ''Importation of Christmas Cactus, *Schlumbergera* spp., and Easter Cactus, *Rhipsalidopsis* spp., in APHIS Approved Growing Media into the United States From the Netherlands,'' APHIS identified one quarantine pest that could potentially follow the import pathway on Christmas cactus and Easter cactus from the Netherlands: *Fusarium oxysporum* Schlechtend. f.sp. *opuntiarum* (Pettinari) Gordon (Fungi Imperfecti: Hypomycetes). Because the use of clean stock and phytosanitary greenhouse production programs provides effective control for *Fusarium* diseases, the pest risk analysis concluded that the safeguards in § 319.37–8(e) would effectively remove that and other pests from the import pathway and allow the safe importation of Christmas cactus and Easter cactus from the Netherlands.

In the pest risk analysis titled, ''Importation of Christmas Cactus, *Schlumbergera* spp., and Easter Cactus, *Rhipsalidopsis* spp., in APHIS Approved Growing Media into the United States From Denmark,'' APHIS determined that there are no quarantine pests that follow the import pathway on Christmas cactus and Easter cactus from Denmark. The pest risk analysis concluded that the safeguards in § 319.37–8(e) will effectively remove any pests from the import pathway and allow the safe importation of Christmas cactus and Easter cactus from Denmark.

Under § 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

The Secretary has determined that it is not necessary to prohibit the importation of Christmas cactus and Easter cactus from the Netherlands and Denmark that are established in an approved growing medium in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This determination is based on the findings of the pest risk analyses and the Secretary's judgment that the application of the measures required under § 319.37–8(e) will prevent the introduction or dissemination of plant pests into the United States.

Accordingly, we are proposing to amend the regulations in § 319.37–8(e) by adding Christmas cactus, *Schlumbergera* spp., and Easter cactus, *Rhipsalidopsis* spp., from the Netherlands and Denmark to the list of plants that may be imported established in approved growing media. This proposed change would allow Christmas cactus and Easter cactus from the Netherlands and Denmark to be imported into the United States in approved growing media provided the plants were produced, handled, and imported in accordance with § 319.37–8(e) and are accompanied at the time of importation by a phytosanitary certificate issued by the plant protection service of the country in which the plants were grown that declares that those requirements have been met.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations to allow the importation of Christmas cactus (*Schlumbergera* spp.) and Easter cactus (*Rhipsalidopsis* spp.) from the Netherlands and Denmark in approved growing media subject to the growing, inspection, and certification requirements specified in 7 CFR 319.37–8(e).

The United States is a net importer of live trees and plants, with imports of these products valued at $843.8 million in 2003. The Netherlands accounted for $147.1 million (17 percent) of U.S. imports of these commodities in 2003. In 2003, imports of live plants and trees from Denmark totaled $1.1 million. The value of unrooted cuttings imported from the Netherlands and Denmark in 2003 totaled $0.9 million and $0.8 million, respectively. (Source: World Trade Atlas, 2004.)

The United States exported a total of $196.4 million worth of live trees and plants in 2003. The Netherlands was the second largest importer of live trees and plants from the United States, importing $33.9 million (17 percent), while Denmark imported $0.3 million worth of these products. Ninety-five percent of the export value of live trees and plants from the United States consisted of products with no soil attached. Exports of unrooted cuttings and slips were valued at $10.8 million in 2003 with $0.2 million (1.7 percent) of the exports going to the Netherlands and no exports to Denmark. (Source: World Trade Atlas, 2004.)

In the U.S. market in 1998, the sales of potted Christmas and Easter cactus plants totaled $5 million, while the sales value of hanging baskets of these plants was $680,000. Christmas and Easter cactus accounted for only 0.9 percent of the total number and for only 0.6 percent of the sales value of potted plants sold in the United States. As for hanging baskets of potted flowering plants, these two species only accounted for 4.1 percent of the total number and for 3.4 percent of the sales value of hanging baskets sold in the United States. (Source: Census of Horticultural Specialties, 1998.)

The Regulatory Flexibility Act requires agencies to specifically consider the economic impact of their rules on small entities. As determined by the Small Business Administration, the small entity size standard for floriculture production (North American Industry Classification System [NAICS] code 111422) is $750,000 or less in annual receipts. Flower, nursery stock, and florists' supplies merchant wholesalers (NAICS code 424930) are considered to be small if they employ 100 or fewer individuals. Although there is no information available describing the size or number of entities selling *Schlumbergera* spp. and *Rhipsalidopsis* spp. plants specifically, U.S. producers would not likely be affected by the changes we are proposing. Few local growers specialize in the production of the plants covered by this proposed rule and should be able to compete in the market due to the size and quality of their product. Also, U.S. producers are likely to stay competitive, as growers from the Netherlands and Denmark will have to pay additional shipping costs and phytosanitary compliance costs when shipping to the United States. Because of these increased costs, few growers in the Netherlands and Denmark are expected to participate in this program.

This change would likely benefit importers and consumers in the United States. Because the plants would be imported in approved growing media instead of arriving unpotted, U.S. importers of *Schlumbergera* spp. and *Rhipsalidopsis* spp. would be able to sell them immediately after arrival. Also, U.S. consumers would benefit from an increased availability of the plants.

Because Christmas cactus and Easter cactus comprise a small fraction of the domestic supply of potted flowering plants and relatively few producers in the Netherlands and Denmark are expected to be involved in the program, no significant change in supply or price of *Schlumbergera* spp. and *Rhipsalidopsis* spp. is expected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow *Schlumbergera* spp. and *Rhipsalidopsis* spp. plants to be imported in approved growing media into the United States from the Netherlands and Denmark. State and local laws and regulations regarding imported *Schlumbergera* spp. and *Rhipsalidopsis* spp. plants would be preempted while the plants are in foreign commerce. Potted plants are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed importation of Christmas cactus and Easter cactus in growing media from the Netherlands and Denmark, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the EDOCKET Web site (see **ADDRESSES** above for instructions for accessing EDOCKET). Copies of the environmental assessment are also available for public inspection in our reading room. (Information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 04–082–1. Please send a copy of your comments to: (1) Docket No. 04–082–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the regulations governing the importation of plants and plant products to add Christmas cactus, *Schlumbergera* spp., and Easter cactus, *Rhipsalidopsis* spp., from the Netherlands and Denmark to the list of plants that may be imported in an approved growing media subject to specified growing, inspection, and certification requirements. APHIS is taking this action in response to requests by the Netherlands and Denmark and after determining that *Schlumbergera* spp. and *Rhipsalidopsis* spp. established in growing media can be imported without resulting in the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. The proposed change would allow *Schlumbergera* spp. and *Rhipsalidopsis* spp. established in growing media to be imported into the United States from the Netherlands and Denmark under certain conditions.

Under this proposed rule, the plants would have to be grown in accordance with written agreements between APHIS and the plant protection service of the country where the plants are grown, and between the foreign plant protection service and the grower. In addition, the plants would have to be accompanied by a phytosanitary certificate issued by the plant protection service of the country in which the plants were grown that declares that the plants have been grown in accordance with the conditions set forth in the regulations.

We are soliciting comments from the public concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5714 hours per response.

Respondents: Plant protection authorities (foreign) and growers.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 10.5.

Estimated annual number of responses: 210.

Estimated total annual burden on respondents: 120 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.37–8 [Amended]

2. In § 319.37–8, in the introductory text of paragraph (e), the list of plants would be amended by removing the period after the word ''*Saintpaulia*'' and by adding, in alphabetical order, entries for ''*Rhipsalidopsis* spp. from the Netherlands and Denmark'' and ''*Schlumbergera* spp. from the Netherlands and Denmark''.

Done in Washington, DC, this 21st day of April 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–8372 Filed 4–26–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV05–915–1 PR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Avocado Administrative Committee (Committee) for the 2005–06 and subsequent fiscal years from $0.20 to $0.27 per 55-pound bushel container or equivalent of avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by May 27, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884: Telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable avocados beginning on April 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any

district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2005–06 and subsequent fiscal years from $0.20 to $0.27 per 55-pound bushel container or equivalent of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–03 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 17, 2005, and recommended with a vote of nine in favor and one abstention, 2005–06 expenditures of $211,038 and an assessment rate of $0.27 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were $241,568. The recommended assessment rate is $0.07 higher than the rate currently in effect. The Committee recommended the increase to rebuild its reserves which have been reduced in recent years. In 2003–04, the Committee estimated assessable production at one million containers but only harvested 660,000, causing the Committee to use its reserves to cover necessary expenses. In 2004–05, it appears there will be another shortfall of approximately 100,000 containers. Thus, 2004–05 assessments will be reduced by approximately $20,000 and the Committee will again have to use reserves to cover its expenses. The Committee reserves are estimated to be approximately $110,000 at the start of the new fiscal year that began April 1, 2005. The Committee expects 900,000 55-pound bushel containers to be harvested during the 2005–06 fiscal year. This is expected to result in approximately $32,000 in excess assessment income, which would increase the Committee's reserves to around $142,000.

The major expenditures recommended by the Committee for the 2005–06 year include $90,235 for salaries, $24,203 for insurance and bonds, $22,730 for employee benefits, $15,000 for research, and $10,000 for local and national enforcement. Budgeted expenses for these items in 2004–05 were $79,800, $26,093, $23,643, $21,000, and $43,135, respectively. The budget item local and national enforcement was reduced for 2005–06 because the compliance officer was hired as Committee manager and this person will perform both compliance and managerial functions. The budget item salaries, reflects these function changes.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses and increase in reserves by expected shipments of Florida avocados. Avocado shipments for the year are estimated at 900,000 bushels which should provide $243,000 in assessment income. Income derived from handler assessments, along with interest income would be adequate to cover budgeted expenses. Funds in the reserve (estimated to be about $110,000 on April 1, 2005) would be kept within the maximum permitted by the order (approximately three fiscal years' expenses).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2005–06 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers of avocados in the production area and approximately 33 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

According to the National Agricultural Statistics Service (NASS) and data provided by the Committee, the average Florida grower price for fresh avocados during the 2003–04 season was equivalent to $22.22 per 55-pound bushel container and total shipments were around 660,000 55-pound bushels. Approximately 11 percent of all handlers handled 76 percent of Florida avocado shipments. Using the average price and information provided by the Committee, nearly all avocado handlers could be considered small businesses under the SBA definition. In addition, based on production and grower prices, and the total number of Florida avocado growers, the average annual grower revenue is approximately $98,000. Thus, the majority of Florida avocado producers may also be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2005–06 and subsequent fiscal years from $0.20 to $0.27 per 55-pound bushel of avocados. The Committee recommended 2005–06 expenditures of $211,038 and an assessment rate of $0.27 per 55-pound bushel of avocados. The proposed assessment rate of $0.27 is $0.07 higher than the 2004–05 rate.

The quantity of assessable avocados for the 2005–06 fiscal year is estimated at 900,000 55-pound bushels. Thus, the $0.27 rate should provide $243,000 in assessment income and be adequate to meet expenses.

The major expenditures recommended by the Committee for the 2005–06 year include $90,235 for salaries, $24,203 for insurance and bonds, $22,730 for employee benefits, $15,000 for research, and $10,000 for local and national enforcement. Budgeted expenses for these items in 2004–05 were $79,800, $26,093, $23,643, $21,000, and $43,135, respectively. The budget item local and national enforcement was reduced for 2005–06 because the compliance officer was hired as Committee manager and this person will perform both compliance and managerial functions. The budget item salaries, reflects these function changes.

The Committee recommended the increase in the assessment rate to rebuild its reserves which have been reduced in recent years. In 2003–04, the Committee estimated assessable production at one million containers, but only harvested 660,000, causing the Committee to use its reserves to cover necessary expenses. For the 2004–05 season, it appears there will be another production shortfall of approximately 100,000 containers below the Committee's estimate. Thus, 2004–2005 assessments will be about $20,000 less than expected and the Committee will again have to use its reserves to cover expenses.

The Committee reserves are estimated to be approximately $110,000 at the start of the new fiscal year that began April 1, 2005. The Committee estimates 900,000 55-pound bushel containers will be harvested during the 2005–06 fiscal year. This is expected to result in $32,000 in excess assessment income, which would increase the Committee's reserves to around $142,000.

The Committee reviewed and recommended 2005–06 expenditures of $211,038 which included increases in administrative and office salaries, and insurance and bond programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. Several alternative assessment and expenditure levels were discussed by these groups based on at what level to fund a research project and on how much they wanted to add to reserves. The assessment rate of $0.27 per 55-pound bushel container of assessable avocados was then determined by dividing the total recommended budget, including the increase in reserves, by the quantity of assessable avocados, estimated at 900,000 55-pound bushel containers or equivalents for the 2005–06 fiscal year. This is approximately $32,000 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average Florida grower price for the 2005–06 marketing season could range between around $15.00 and $22.00 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 2005–06 fiscal year as a percentage of total grower revenue could range between 1.2 and 1.8 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 17, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2005–06 fiscal year began on April 1, 2005, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable avocados handled during such fiscal year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2005, an assessment rate of $0.27 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: April 21, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–8359 Filed 4–26–05; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Regulations for the Safe Transport of Radioactive Material; Solicitation of Comments on Proposed Changes

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Solicitation of comments on proposed changes.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Transportation (DOT) are jointly seeking comments on proposed changes to the International Atomic Energy Agency (IAEA) Regulations for the Safe Transport of Radioactive Material (referred to as TS–R–1). The proposed changes were submitted by the U.S. and other IAEA member states and International Organizations, and might necessitate subsequent domestic

compatibility rulemakings by both the NRC and the DOT.

DATES: Proposed changes will be accepted until July 1, 2005. Proposed changes received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for proposed changes received on or before this date.

ADDRESSES: Mail proposed changes to Michael Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver proposed changes to Two White Flint North, 11545 Rockville Pike (Mail Stop T6D59), Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays.

FOR FURTHER INFORMATION CONTACT: John Cook, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–8521; e-mail: *jrc1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The IAEA periodically revises its Regulations for the Safe Transport of Radioactive Material (TS–R–1) to reflect new information and accumulated experience. The DOT is the U.S. competent authority before the IAEA for radioactive material transportation matters. The NRC provides technical support to the DOT in this regard, particularly with respect to Type B and fissile packages.

On April 7, 2005, the IAEA posted for comment 28 proposed changes to TS–R–1. The IAEA's review process calls for Member States and International Organizations to provide comments to the IAEA by August 5, 2005. The proposed changes may be incorporated in a revised edition of the regulations in 2007, nominally to become effective worldwide in 2009. To assure opportunity for public involvement in the international regulatory development process, the DOT and the NRC are soliciting comments on the proposed changes at this time. This information will assist the DOT and the NRC in having a full range of views as the agencies develop comments the U.S. will submit to the IAEA.

The following documents are available for viewing and downloading on the Internet at: *http://hazmat.dot.gov/regs/files/IAEADraftChanges.htm.*

- Table of the regulatory changes proposed by the IAEA.
- A consolidated draft of the proposed TS–R–1 revision.
- A standard comment form for the proposed TS–R–1 revision.
- Table of the advisory material changes proposed by the IAEA.
- A consolidated draft of the proposed TS–G–1.1 revision.
- A standard comment form for the proposed TS–G–1.1 revisions.

Public comments on proposed changes must be submitted in writing (electronic file on disk in Word format preferred) using the standard comment forms referred to above. The NRC and the DOT will review the public comments received by July 1, 2005. Based in part on the information, the agencies will determine the U.S. comments on the proposed changes to be submitted to IAEA by August 5, 2005.

Comments on the proposed changes from the U.S., other Member States and International Organizations will be considered at an IAEA Review Panel Meeting to be convened by IAEA on September 5–9, 2005, in Vienna, Austria. Note that future domestic rulemakings, if necessary, will continue to follow established rulemaking procedures, including the opportunity to formally comment on proposed rules.

Dated in Rockville, Maryland, this 21st day of April 2005.

For the Nuclear Regulatory Commission.

David W. Pstrak,

Transportation and Storage Project Manager, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–8371 Filed 4–26–05; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052–AC26

Title IV Conservators, Receivers, and Voluntary Liquidations; Receivership Repudiation Authorities

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) is proposing a rule on how the Farm Credit System Insurance Corporation (FCSIC), as receiver or conservator of a Farm Credit System (System) institution, will treat financial assets transferred by the institution in connection with a securitization or in the form of a participation. The rule would resolve issues raised by Financial Accounting Standards Board (FASB) Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities (SFAS 140). Under conditions described in the rule, the FCSIC will not seek to recover or reclaim certain financial assets in exercising its authority to repudiate or disaffirm contracts pursuant to 12 CFR 627.2725(b)(2), (b)(14) and 627.2780(b) and (d). The proposed rule also provides that the FCSIC will not seek to enforce the ''contemporaneous'' requirement of section 5.61(d) of the Farm Credit Act of 1971, as amended (Act) (12 U.S.C. 2277a–10(d)). The proposed rule is substantially identical to receivership rules issued by the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA).

DATES: Please send your comments to us by June 27, 2005.

ADDRESSES: You may send comments by electronic mail to ''*reg-comm@fca.gov*,'' through the Pending Regulations section of FCA's Web site, ''*http://www.fca.gov*,'' or through the Governmentwide ''*http://www.regulations.gov*'' Web site. You may also send comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 or by fax to (703) 734–5784. You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove electronic-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: Robert E. Donnelly, Senior Accountant, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, 703–883–4498, TTY (703) 883–4434, or Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, 703–883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

Our objective in proposing this rule is to give certainty to System institutions regarding how participations and securitizations engaged in by a System institution will be treated by the FCSIC if the institution is subsequently placed

in conservatorship or receivership. The rule will achieve this by ensuring that the FCSIC will not attempt to ''pull back'' the subject assets into the conservatorship or receivership estate if the transaction meets specified conditions.

II. Background

Under generally accepted accounting principles (GAAP), a transfer of financial assets is accounted for as a sale if the transferor surrenders control over the assets. This principle is set forth in the SFAS No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities, issued by the FASB.[1] One of the conditions for determining that the transferor has surrendered control is that the assets have been isolated from the transferor, *i.e.*, put presumptively beyond the reach of the transferor, its creditors, a trustee in bankruptcy, or a receiver. This is known as the ''legal isolation'' condition.

Whether the legal isolation condition has been met is determined primarily from a legal perspective. This determination involves considerations of the kind of receivership into which the transferor may be placed and the powers of the receiver to reach assets that were transferred prior to its appointment. If the available evidence provides reasonable assurance that the transferred assets would be beyond the reach of the powers of a bankruptcy trustee or receiver for the transferor, then a determination that the transferred assets have been legally isolated is appropriate.

Where the transferor is a System institution for which the FCSIC may be appointed conservator or receiver, the issue arises whether financial assets transferred in connection with a securitization or in the form of a participation would be put beyond the reach of the FCSIC as conservator or receiver. This issue arises because of the FCSIC's authority to repudiate burdensome contracts under §§ 627.2725(b)(2), (b)(14) and 627.2780(b) and (d) of FCA regulations; and because of section 5.61(d) of the Act.[2] Under §§ 627.2725(b)(2) and 627.2780(d), the FCSIC may take any action it considers appropriate or expedient to carry on the business of the institution during the process of liquidation or during the conservatorship. Under § 627.2725(b)(14), the FCSIC, when acting as conservator or receiver of a System institution, has the power to disaffirm or repudiate any contract or lease to which the institution is a party, the performance of which the FCSIC determines to be burdensome. Repudiation of a contract relieves the FCSIC from performing any unperformed obligations remaining under the contract. Section 5.61(d) of the Act provides that no agreement that tends to diminish or defeat the FCSIC's interest in an asset acquired by the FCSIC as conservator or receiver is enforceable against the FCSIC unless the agreement meets certain requirements. One of those requirements is that the agreement must be executed, by the institution and by any person claiming an adverse interest under it, contemporaneously with the acquisition of the asset by the institution. This is referred to as the ''contemporaneous'' requirement.

The FDIC and the NCUA each adopted a rule in 2000[3] to resolve the issues discussed above in SFAS 140.[4] Specifically, the two agencies addressed whether their authorities to repudiate contracts would prevent a transfer of financial assets by an insured depository institution or a credit union in connection with a securitization or in the form of a participation from satisfying the ''legal isolation'' condition of SFAS 140. The Act and FCA regulations contain substantially similar provisions that apply when the FCSIC is appointed conservator or receiver for a System institution, and we are proposing to resolve the issues in the same way.[5] As such, this preamble and proposed rule track the language of the FDIC's and NCUA's rules. We note that nothing in this proposed rule is intended to provide any System institutions with the authority to engage in any transaction that is not otherwise authorized.

III. Description of the Proposed Rule

This proposal would add a new § 627.2726 to the conservatorship and receivership provisions in part 627 of FCA's regulations. The proposed rule would apply only to those securitizations or participations in which the transfer of financial assets meets all conditions for sale accounting treatment under GAAP, other than the ''legal isolation'' condition as it applies to institutions for which the FCSIC may be appointed as conservator or receiver, which would be addressed by the proposed rule. The proposed rule provides that, for these transfers, the FCSIC will not, by exercise of its authority to repudiate contracts under § 627.2725(b)(2) or (b)(14), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by a System institution in connection with a securitization or in the form of a participation. Although the repudiation of a securitization or participation will not affect transferred financial assets, repudiation will excuse the FCSIC from performing any continuing obligations imposed by the securitization or participation. If the FCSIC, in order to terminate such continuing obligations or duties, seeks to repudiate an agreement or contract under which a System institution has transferred financial assets in connection with a securitization or in the form of a participation, the FCSIC will not seek to reclaim, recover, or recharacterize as property of the institution or the receivership such financial assets.

The definition of ''participation'' in the proposed rule is specifically limited to participations that are ''without recourse'' to the selling or ''lead'' institution. ''Without recourse'' would mean that the participation must not be subject to any agreement that requires the selling or ''lead'' institution to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation. The term ''without recourse'' does not, however, preclude the lead institution from retaining a subordinated interest in the participated obligation, against which losses are initially allocated.

The proposed rule would not apply unless the System institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

The proposed rule further provides that it will not be construed as waiving, limiting, or otherwise affecting the rights or powers of the FCSIC to take

[1] SFAS 140 replaced SFAS 125 (which had covered the same issues and was identically titled) in September 2000. SFAS 140 revised the standards for accounting for securitizations and other transfers of financial assets and collateral and required certain disclosures, but it carried over most of the provisions of SFAS 125 without reconsideration. The FDIC receivership issues and its related rule 12 CFR 360.6, which are discussed later in this preamble, are described in paragraphs 157–160 of SFAS 140.

[2] *See* 12 CFR 627.2725(b)(2), (b)(14) and 627.2780(b) and (d), and 12 U.S.C. 2277a–10(d).

[3] *See* 12 CFR 360.6 (65 FR 49189 (Aug. 11, 2000)) and 12 CFR 709.10 (65 FR 55439 (Sept. 14, 2000)).

[4] These issues were originally raised in SFAS 125, which was replaced by SFAS 140 as described in footnote 1 above. The issues continue to be discussed SFAS 140.

[5] *See* 12 U.S.C. 1821(e) for the law pertaining to the FDIC, and 12 U.S.C. 1787(b)(9) and 1788(a)(3) for the laws pertaining to the NCUA.

any action or to exercise any power not specifically limited by this section. Such rights or powers include, but are not limited to, any rights, powers or remedies of the FCSIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

The proposed rule further provides that the FCSIC will not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a System institution solely because such agreement does not meet the ''contemporaneous'' requirement of section 5.61(d) of the Act.

The FCA intends the proposed rule to apply to securitizations and participations engaged in by System institutions while the rule is in effect, even if the rule is later amended or repealed. Section 627.2726(g) provides that any repeal or amendment of the rule by the FCA will not apply to any transfer of financial assets made in connection with a securitization or participation that was in effect before such repeal or amendment. As a result of § 627.2726(g), where a transfer of financial assets in connection with a securitization or in the form of a participation is made by a System institution and the securitization or participation was in effect before any repeal or amendment of the rule by the FCA, such transfer will continue to satisfy the legal isolation requirement notwithstanding the repeal or amendment.

We also propose a conforming change to § 627.2780(h) to clarify that the provisions of this proposed rule apply to a conservatorship as well as to a receivership.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

For the reasons stated in the preamble, we propose to amend part 627 of Chapter VI, title 12, of the Code of Federal Regulations as follows:

PART 627—CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS

1. The authority citation for part 627 is revised to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58, 5.61 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7, 2277a–10).

Subpart B—Receivers and Receiverships

2. Add a new § 627.2726 to read as follows:

§ 627.2726 Treatment by the conservator or receiver of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.*

Beneficial interest means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

Financial asset means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

Participation means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the ''lead'', to a buyer, known as the ''participant'', without recourse to the lead, pursuant to an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant due to a default on the underlying obligation.

Securitization means the issuance by a special purpose entity of beneficial interests:

(1) The most senior class of which at the time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations, or

(2) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the Securities Act of 1933 (15 U.S.C. 77d), as amended, or in transactions exempt from registration under such Act pursuant to Regulation S thereunder (or any successor regulation).

Special purpose entity means a trust, corporation, or other entity demonstrably distinct from the Farm Credit institution that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The receiver shall not, by exercise of its authority to repudiate contracts under § 627.2725(b)(2) and (b)(14), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by a Farm Credit institution in connection with a securitization or participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the ''legal isolation'' condition as it applies to institutions for which the FCSIC may be appointed as receiver which is addressed by this section.

(c) Paragraph (b) of this section shall not apply unless the Farm Credit institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

(d) Paragraph (b) of this section shall not be construed as waiving, limiting, or otherwise affecting the power of the receiver to disaffirm or repudiate any agreement imposing continuing obligations or duties upon the insured depository institution in receivership.

(e) Paragraph (b) of this section shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the receiver to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the receiver regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(f) The receiver shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a

Farm Credit institution solely because such agreement does not meet the ''contemporaneous'' requirement of section 5.61(d) of the Act.

(g) This section may be repealed or amended by the Farm Credit Administration, but any such repeal or amendment shall not apply to any transfers of financial assets made in connection with a securitization or participation that was in effect before such repeal or modification.

Subpart C—Conservators and Conservatorships

3. Amend § 627.2780(b) by adding a second sentence to read as follows:

§ 627.2780 Powers and duties of conservators.

* * * * *

(b) * * * The provisions of § 627.2726 shall also apply to the conservator of a Farm Credit institution.* * *

* * * * *

Dated: April 20, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–8237 Filed 4–26–05; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, 29, 91, 121, 125, 129 and 135

[Docket No. FAA–2005–20245; Notice No. 23–56, 25–118, 27–41, 29–48, 91–286, 121–308, 125–47, 129–40 and 135–95]

RIN 2120–AH88

Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM published on February 28, 2005. In that document, the FAA proposed to amend the cockpit voice recorder and digital flight data recorder regulations for certain air carriers, operators, and aircraft manufacturers. This extension is a result of a request from the Aerospace Industries Association to extend the comment period for the NPRM.

DATES: Send your comments on or before June 28, 2005.

ADDRESSES: You may send comments [identified by Docket Number FAA–2005–20245] using any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Timothy W. Shaver, Avionics Systems Branch, Aircraft Certification Service, AIR–130, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–4686; facsimile (202) 385–4651; e-mail *tim.shaver@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA continues to invite interested persons to take part in this rulemaking by submitting written comments, data, or views about the NPRM we issued on February 28, 2005 (Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations (70 FR 9752) (February 28, 2005). We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in that document. The most helpful comments reference a specific portion of the NPRM, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

Background

On February 28, 2005, the Federal Aviation Administration (FAA) issued Notice No. 23–56, 25–118, 27–41, 29–48, 91–286, 121–308, 125–47, 129–40 and 135–95, Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations (70 FR 9752) (February 28, 2005) (''NPRM''). The comment period for the NPRM ends on April 29, 2005.

By letter dated April 1, 2005, the Aerospace Industries Association (AIA) asks the FAA to extend the NPRM's comment period by thirty days. AIA believes extensive coordination is necessary with the suppliers of ''Buyer Furnished Equipment (BFE)'' and ''Supplier Furnished Equipment (SFE)'' because of the significant and complex contents of the NPRM. AIA states an extension is necessary to provide a meaningful, thorough set of comments.

The FAA agrees with AIA's request for an extension of the comment period. We recognize the NPRM's contents are significant and complex and that a sixty-day comment period is insufficient. We also believe that additional requests for extensions will be filed shortly based on the lack of comments from those entities that will be affected by the proposals in the NPRM.

We have determined that an additional sixty days will be enough for potential commenters to collect the cost and operational data necessary to provide meaningful comments to the NPRM. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with 14 CFR 11.47(c), the FAA has reviewed the petition submitted by Aerospace Industries Association (AIA) for an extension of the comment period to the NPRM. The FAA finds that an extension of the comment period for Notice No. 23–56, 25–118, 27–41, 29–48, 91–286, 121–308, 125–47, 129–40 and 135–95 is consistent with the public interest, and that good cause exists for taking this action. The FAA also has determined that AIA has a substantive interest in the proposed rule and has shown good cause for the extension.

Accordingly, the comment period for Notice No. 23–56, 25–118, 27–41, 29–48, 91–286, 121–308, 125–47, 129–40 and 135–95 is extended until June 28, 2005.

Issued in Washington, DC, on April 21, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–8457 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21028; Directorate Identifier 2004–NM–238–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require replacing brackets that hold the P5 panel to the airplane structure, the standby compass bracket assembly, the generator drive and standby power module, and the air conditioning module. This proposed AD also would require, among other actions, inspecting for wire length and for damage of the connectors and the wire bundles, and doing applicable corrective actions if necessary. This proposed AD is prompted by an electrical burning smell in the flight compartment. We are proposing this AD to prevent wire bundles from contacting the overhead dripshield panel and modules in the P5 overhead panel, which could result in electrical arcing and shorting of the electrical connector and consequent loss of several critical systems essential for safe flight.

DATES: We must receive comments on this proposed AD by June 13, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21028; the directorate identifier for this docket is 2004–NM–238–AD.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21028; Directorate Identifier 2004–NM–238–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received reports of an electrical burning smell in the flight compartment. An inspection of the P5 overhead panel found chafed and burned wires. The chafed wires were caused by wire bundle contact with the overhead dripshield panel and modules in the P5 overhead panel, which resulted in electrical arcing and shorting of the electrical connector.

In addition, an investigation at Boeing found that some of the earliest produced Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes delivered from Boeing may have unwanted wire length in the P5 overhead panels. Boeing has made several changes in production to eliminate this condition.

Wire bundle contact with the overhead dripshield panel and modules in the P5 overhead panel, if not corrected, could result in electrical arcing and shorting of the electrical connector and consequent loss of several critical systems essential for safe flight.

Relevant Service Information

We have reviewed Boeing Service Bulletin 737–24A1141, Revision 1, dated December 23, 2004. The service bulletin describes the following procedures:

- Replacing the five brackets that hold the P5 panel to the airplane structure with new brackets, which includes measuring resistance, and applying bonding agent;
- Doing a general visual inspection for wire length and for damage of the connectors and the wire bundles; and applicable corrective actions, which includes retying or reterminating the damaged wire bundle and wires that have insufficient length, repairing wire damage, and replacing damaged connectors with new connectors;
- Installing Teflon/lacing tape and a nylon shield;
- Making wiring changes;
- Replacing the standby compass bracket assembly with a new assembly; and
- Replacing the stud assemblies with new assemblies.

We also have reviewed Boeing Component Service Bulletin 233A3205–24–01, dated July 26, 2001. For certain airplanes, this service bulletin describes procedures for modifying the generator drive and standby power module

assembly, which involves replacing the rear cover and four standoffs with new parts. In addition, we have reviewed Boeing Component Service Bulletin 69–37319–21–02, Revision 1, dated August 30, 2001. For certain other airplanes, this service bulletin describes procedures for modifying the air conditioning module assembly, which involves replacing three plate assemblies, a cover, and two standoffs with new parts. The actions specified in the applicable component service bulletin must be done before or concurrent with the actions specified in Boeing Service Bulletin 737–24A1141 described previously.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 740 airplanes of the affected design in the worldwide fleet and 333 airplanes on the U.S. register.

For all airplanes, the proposed replacements and inspections would take about 16 or 18 work hours per airplane (depending on airplane configuration), at an average labor rate of $65 per work hour. Required parts would cost about $10,231 or $11,139 per airplane (depending on kit). Based on these figures, the estimated cost of the replacements and inspections proposed by this AD is between $3,753,243 and $4,098,897, or between $11,271 and $12,309 per airplane.

For certain airplanes, the modification of the generator drive and standby power module assembly would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would be provided by the airplane manufacturer at no cost to the operators. Based on these figures, the estimated cost of this modification proposed by this AD is $130 per airplane.

For certain other airplanes, the modification of the air conditioning module assembly would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts would be provided by the airplane manufacturer at no cost to the operators. Based on these figures, the estimated cost of this modification proposed by this AD is $65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–21028; Directorate Identifier 2004–NM–238–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by June 13, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–24A1141, Revision 1, dated December 23, 2004.

Unsafe Condition

(d) This AD was prompted by an electrical burning smell in the flight compartment. We are issuing this AD to prevent wire bundles from contacting the overhead dripshield panel and modules in the P5 overhead panel, which could result in electrical arcing and shorting of the electrical connector and consequent loss of several critical systems essential for safe flight.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection/Replacement/Wiring Changes/ Corrective Actions

(f) Within 24 months after the effective date of this AD, do the actions in paragraphs (f)(1) through (f)(5) of this AD by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–24A1141, Revision 1, dated December 23, 2004. Any applicable corrective actions must be done before further flight.

(1) Replace the five brackets that hold the P5 panel to the airplane structure with new brackets;

(2) Do a general visual inspection for wire length and damage of the connectors and the wire bundles, and applicable corrective actions;

(3) Make wiring changes;

(4) Replace the standby compass bracket assembly with a new assembly; and

(5) Replace the stud assemblies with new assemblies.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of

inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Concurrent Requirements

(g) Before or concurrently with the requirements of paragraph (f) of this AD, do the applicable action specified in Table 1 of this AD.

TABLE 1.—CONCURRENT REQUIREMENTS

For airplanes identified in Boeing component service bulletin—	Action—
(1) 233A3205–24–01, dated July 26, 2001	Modify the generator drive and standby power module assembly in accordance with the Accomplishment Instructions of the service bulletin.
(2) 69–37319–21–02, Revision 1, dated August 30, 2001	Modify the air conditioning module assembly in accordance with the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on April 18, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–8403 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20802; Directorate Identifier 2005–CE–18–AD]

RIN 2120–AA64

Airworthiness Directives; PZL-Swidnik S.A. Models PW–5 ''Smyk'' and PW–6U Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain PZL-Swidnik S.A. (PZL-Swidnik) Models PW–5 ''Smyk'' and PW–6U gliders. This proposed AD would require you to inspect for the minimum dimension of the left side aileron, right side aileron, and airbrake push-rod ends for certain Model PW–5 ''Smyk'' gliders; inspect for the minimum dimension of the aileron, airbrake, and elevator control push-rod ends for certain Model PW–6U gliders; and replace any push-rod end that does not meet the minimum dimension. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this proposed AD to detect and replace any push-rod end that does not meet the minimum dimension, which could result in failure of the control system. This failure could lead to loss of control of the glider.

DATES: We must receive any comments on this proposed AD by May 27, 2005.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact PZL-Swidnik S.A., Polish Aviation Works, Al. Lotnikow Polskich 1, 21–045 Swidnik, Poland; telephone: 48 81 468 09 01 751 20 71; facsimile: 48 81 468 09 19 751 21 73.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2005–20802; Directorate Identifier 2005–CE–18–AD.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2005–20802; Directorate Identifier 2005–CE–18–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–20802; Directorate Identifier 2005–CE–18–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final

disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The General Inspectorate of Civil Aviation (GICA), which is the airworthiness authority for Poland, recently notified FAA that an unsafe condition may exist on certain PZL-Swidnik S.A. (PZL-Swidnik) gliders. The GICA reports that an owner of a Model PW–6U glider found the dimension of the push-rod end to not meet the minimum dimension of 0.165 inches (in.) or 4.2 millimeter (mm). Further, the GICA reports that the manufacturer has identified a production run of these parts that do not meet the minimum dimension of the push-rod end. Similar push-rod ends, where applicable, are used to link the ailerons, airbrakes, and elevator control systems in the Models PW–5 ''Smyk'' and PW–6U gliders.

What is the potential impact if FAA took no action? Any push-rod end that does not meet the minimum dimension could result in failure of the control system. This failure could lead to loss of control of the glider.

Is there service information that applies to this subject? PZL-Swidnik has issued:

—Mandatory Bulletin Number BO–17–03–18, dated December 22, 2003, for the Model PW–5 ''Smyk'' gliders.

—Mandatory Bulletin Number BO–78–03–06, dated December 22, 2003, for the Model PW–6U gliders.

What are the provisions of this service information? The service information includes procedures for:

—Inspecting for the minimum dimension of the left side aileron, right side aileron, and airbrake push-rod ends for the Model PW–5 ''Smyk'' gliders;

—Inspecting for the minimum dimension of the aileron, airbrake, and elevator control push-rod ends for the Model PW–6U gliders; and

—Replacing any push-rod end that does not meet the minimum dimension.

What action did the GICA take? The GICA classified this service bulletin as mandatory and issued Polish AD Numbers SP–0085–2003–A, dated December 22, 2003, and SP–0086–2003, dated December 22, 2003, to ensure the continued airworthiness of these gliders in Poland.

Did the GICA inform the United States under the bilateral airworthiness agreement? These PZL-Swidnik Models PW–5 ''Smyk'' and PW–6U gliders are manufactured in Poland and are type-certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the GICA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the GICA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other PZL-Swidnik Models PW–5 ''Smyk'' and PW–6U gliders of the same type design that are registered in the United States, we are proposing AD action to detect and replace any push-rod end that does not meet the minimum dimension, which could result in failure of the control system. This failure could lead to loss of control of the glider.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many gliders would this proposed AD impact? We estimate that this proposed AD affects 67 gliders in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected gliders? We estimate the following costs to do this proposed inspection of the push-rod ends:

Labor cost	Parts cost	Total cost per glider	Total cost on U.S. operators
1 work hour × $65 = $65	Not Applicable	$65	67 × $65 = $4,355

We estimate the following costs to do any necessary push-rod end replacements that would be required based on the results of this proposed inspection. We have no way of determining the number of gliders that may need this replacement:

Labor cost per push-rod end	Parts cost	Total cost per push-rod end per glider
1 work hour × $65 = $65	Not Applicable	$65

The manufacturer has stated that the costs for any required parts and transportation will be covered under the manufacturer's warranty.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

Would this proposed AD impact various entities? We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2005–20802; Directorate Identifier 2005–CE–18–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

PZL–Swidnik S.A.: Docket No. FAA–2005–20802; Directorate Identifier 2005–CE–18–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by May 27, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Gliders Are Affected by This AD?

(c) This AD affects the following glider models and serial numbers that are certificated in any category:

Model	Serial Numbers
PW–5 ''Smyk''	17.12.022 through 17.12.024.
PW–6U	78.02.07 through 78.02.10 and 78.03.01 through 78.03.03.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. The actions specified in this AD are intended to detect and replace any push-rod end that does not meet the minimum dimension, which could result in failure of the control system. This failure could lead to loss of control of the glider.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect for the minimum dimension (0.165 inches (in.) or 4.2 millimeter (mm)): (i) Any left side aileron, right side aileron, and airbrake push-rod end (part number (P/N) 511.00.20.00) for the Model PW–5 ''Smyk'' glider; and (ii) Any aileron, airbrake, and elevator control push-rod end (P/N 78.21.215.00.00) for the Model PW–6U glider.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already done.	*For the Model PW-5 ''Smyk'' glider:* Follow Communication Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–17–03–18, dated December 22, 2003. *For the Model PW–6U glider:* Follow Communication Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–78–03–06, dated December 22, 2003.
(2) Replace any push-rod end (P/N 511.00.20.00 or 78.21.215.00.00) that you find as a result of the inspection required by paragraph (e)(1) of this AD that has a push-rod end that is less than the minimum dimension (0.165 in. or 4.2 mm)..	Before further flight after the inspection required by paragraph (e)(1) of this AD.	*For the Model PW–5 ''Smyk'' glider:* Follow Communication Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–17–03–18, dated December 22, 2003. *For the Model PW–6U glider:* Follow Communication Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–78–03–06, dated December 22, 2003.

Actions	Compliance	Procedures
(3) Do not install any push-rod end (P/N 511.00.20.00 or 78.21.215.00.00) with a dimension that is less than the minimum dimension (0.165 in. or 4.2 mm) for the following use:. (i) Any push-rod end for the left side aileron, right side aileron, or airbrake of the Model PW–5 ''Smyk'' glider; and (ii) Any push-rod end for the ailerons, airbrake, or elevator control of the Model PW–6U glider.	As of the effective date of this AD	*For the Model PW–5 ''Smyk'' glider:* Follow Communication Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–17–03–18, dated December 22, 2003. *For the Model PW–6U glider:* Follow Communication Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–78–03–06, dated December 22, 2003.

Note: You may contact the manufacturer at the address in paragraph (h) of this AD to request any required replacement part push-rod end.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) Polish AD Numbers SP–0085–2003–A, dated December 22, 2003, and SP–0086–2003, dated December 22, 2003, also address the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact PZL-Swidnik S.A., Polish Aviation Works, Al. Lotnikow Polskich 1, 21–045 Swidnik, Poland; telephone: 48 81 468 09 01 751 20 71; facsimile: 48 81 468 09 19 751 21 73. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–20802; Directorate Identifier 2005–CE–18–AD.

Issued in Kansas City, Missouri, on April 20, 2005.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–8406 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20895; Airspace Docket No. 05–ASO–6]

Proposed Establishment of Class D Airspace; Pascagoula, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Pascgoula, MS. A federal contract tower with a weather reporting system is being constructed at the Trent Lott International Airport. Therefore, the airport will meet criteria for Class D airspace. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1—mile radius of the airport.

DATES: Comments must be received on or before May 27, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20895/ Airspace Docket No. 05–ASO–6, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20895/Airspace Docket No. 05–ASO–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NRPMs

An electronic copy of this document may be downloaded through the internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class D airspace at Pascagoula, MS. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO MS D Pascagoula, MS [NEW]

Pascagoula, Trent Lott International Airport, MS
(Lat. 30°27′46″ N, long. 88°31′45″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of the Trent Lott International Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on April 11, 2005.

Mark D. Ward,

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 05–8348 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20931; Airspace Docket No. 05–AEA–08]

Proposed Establishment of Class E Airspace; Sutton, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace area at Sutton, WV. The development of a Standard Instrument Approach Procedure (SIAP) based on area navigation (RNAV) to serve flights into Braxton County Airport, Sutton, WV under Instrument Flight Rules (IFR) has made this proposal necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before May 27, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20931/ Airspace Docket No. 05–AEA–08 at the beginning of your comments. You must also submit comments on the Internet at *http://dms.dot.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace and Operations, Eastern Terminal Service Unit, ETSU, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit

with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20931/Airspace Docket No. 05–AEA–08.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at Sutton, WV. The development of a SIAP to serve flights operating IFR into Braxton County Airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate aircraft using the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulators Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA WV E5 Sutton, WV (NEW)

Braxton County Airport, Sutton, WV
(lat. 38°41′13″ N., long. 80°39′07″ W.)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of Braxton County Airport.

* * * * *

Issued in Jamaica, New York, on April 19, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–8345 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 43 and 50

Personal Commercial Solication on DoD Installations

AGENCY: Department of Defense.

ACTION: Proposed rule; correction.

SUMMARY: On Tuesday, April 19, 2005 (70 FR 20316), The Department of Defense published a proposed rule on ''Personal Commercial Solication on DoD Installations.'' The document includes the draft DD Form 2885, ''Personal Commercial Solication Evaluation,'' which was inadvertently omitted during the previous publication to be published as Appendix C to Part 50. All other information remains unchanged.

Dated: April 21, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

Appendix C to Part 50

PERSONAL COMMERCIAL SOLICITATION EVALUATION

PRIVACY ACT STATEMENT

AUTHORITY: Section 1601 of Title 15 U.S.C.

PRINCIPAL PURPOSE(S): Information on this form will be used to document the experience with the sales representative who provides the Service member with this evaluation. The information will be made available to officials within the Department of Defense responsible for oversight of personal commercial solicitation practices. These officials may need to make contact concerning the solicitation described in questions 2, 3, and 4. Service member response will help ensure sales representatives conduct themselves fairly and in accordance with DoD Directive 1344.7. This information will be maintained as part of a case file in the event proceedings are considered necessary to deny or withdraw permission for the sales representative and/or the company to solicit on one or more installations.

ROUTINE USE(S): None.

D R A F T

DISCLOSURE: **Completion of this form is voluntary** and serves to evaluate the conduct during the meeting. There is no consequence to the Service member for not completing this evaluation.

Please take a moment to respond to the following questions concerning your experience with the sales representative who provided you this evaluation. Your response will help ensure sales representatives conduct themselves fairly and according to the policies outlined in DoD Directive 1344.7. When you have completed this evaluation, please send it to the Installation Commander or his/her designated representative. **Please do not give the completed evaluation to the sales representative to mail for you.**

1. SALES REPRESENTATIVE WHO CONTACTED YOU AND HIS OR HER COMPANY	
a. NAME OF SALES REPRESENTATIVE	b. COMPANY NAME

2. MAKING THE APPOINTMENT *(Mark (X) "Yes" if any of the following are true)*	YES	NO
a. The sales representative failed to make an appointment in advance to see me.		
b. The initial contact to schedule an appointment occurred while I was on duty (during normal duty hours).		
c. I made initial contact with the sales representative in response to an advertisement that said he or she would be on the installation during a specific time or at a specific place.		
d. A superior in my chain of command advised or required me to meet with the sales representative.		

3. TIME AND PLACE OF THE APPOINTMENT *(Mark (X) "Yes" if any of the following are true)*	YES	NO
a. The presentation and/or sale took place on the installation while I was on duty (during normal duty hours).		
b. The presentation took place during a group meeting (official or unofficial) with other military personnel.		
c. The presentation took place in a restricted area.		
d. The sales representative used an on-base facility as a showroom to display his or her product or services. (This does not include displays conducted by military family members in their on-base residence.)		

4. CONDUCT DURING THE APPOINTMENT *(Mark (X) "Yes" if any of the following are true)*	YES	NO
a. I was unduly pressured into buying the product or service.		
b. I was not given the adequate facts, or was induced into making a purchase based on factors other than the merits of the product or service.		
c. I was offered a rebate to close the sale or drop a competing offer.		
d. The sales representative is a full-time DoD employee of senior rank.		
e. The sales representative implied that he or she is sponsored or endorsed by the military, the installation or my unit. **(For example, the representative used an official or unofficial title such as "unit advisor" or "installation consultant.")**		
f. The sales representative had a military pay allotment form in his/her possession.		

5. YOUR CONTACT INFORMATION		
a. NAME *(Last, First, Middle Initial)*	b. HOME TELEPHONE NUMBER *(Include area code)*	c. WORK TELEPHONE NUMBER *(Include area code)*
d. E-MAIL ADDRESS	e. UNIT ADDRESS	

DD FORM 2885, 20050421 DRAFT

[FR Doc. 05–8354 Filed 4–26–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD08–05–016]

RIN 1625–AA01

Anchorage Regulations; Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the anchorage regulations for the Mississippi River below Baton Rouge, LA, including South and Southwest Passes in order to improve safety at the Lower Kenner Bend Anchorage. This proposed rule is needed to protect aircraft passengers and crew, mariners and the public from the potential safety hazards associated with the ascent and descent of aircraft over vessels anchored in the vicinity of the Louis Armstrong New Orleans International Airport, New Orleans, LA.

DATES: Comments and related material must reach the Coast Guard on or before May 27, 2005.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA 70131, Attn: Lieutenant Kevin Lynn. The Eighth Coast Guard District Commander maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA 70131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Kevin Lynn, Project Manager for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–05–016], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m), at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Runway 1–19 at the Louis Armstrong New Orleans International Airport is positioned in a north-south line running parallel to the Airport Access Road. Aircraft approaching the runway from the south or departing the runway from the north pass over the Lower Kenner Bend Anchorage. Due to the close proximity of Runway 1–19 to Kenner Bend, aircraft occasionally descend and ascend directly over vessels anchored in the Lower Kenner Bend Anchorage, creating a potentially dangerous situation that is of particular concern during periods of reduced visibility. Aircraft approaching the runway from the south follow a descending glide slope path with a minimum height of 311 feet above mean sea level over the Kenner Bend Anchorage. Certain vessels with cargo handling equipment such as cranes and booms are capable of extending this equipment to a height upwards of 300 feet above the waterline. This amendment to the anchorage regulations for the Mississippi River below Baton Rouge, LA, including South and Southwest Passes is proposed to prohibit vessels that are anchored in the Lower Kenner Bend Anchorage from engaging in cargo transfer operations or exercising any cargo handling equipment such as cranes or booms while at anchor. This proposed amendment is needed to increase safety at Kenner Bend by reducing the potential for collision between aircraft and vessels anchored in the Lower Kenner Bend Anchorage.

Discussion of Proposed Rule

The Coast Guard proposes to amend the anchorage regulations for the Mississippi River below Baton Rouge, LA, including South and Southwest Passes in order to improve safety at the Lower Kenner Bend Anchorage. This proposed amendment would prohibit vessels that are anchored in the Lower Kenner Bend Anchorage from engaging in cargo transfer operations or exercising any cargo handling equipment such as cranes or booms while at anchor.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor in the Lower Kenner Bend Anchorage. This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This proposed rule does not prohibit vessels from anchoring in the Lower Kenner Bend Anchorage; and (2) Cargo transfer operations are not typically conducted at the Lower Kenner Bend Anchorage.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Kevin Lynn at (504) 589–6271.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule would not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage Regulations.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Revise paragraph 110.195(c)(6) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

* * * * *

(c) * * *

(6) The intention to transfer any cargo while in an anchorage shall be reported to the Captain of the Port, giving particulars as to name of ships involved, quantity and type of cargo, and expected duration of the operation.

The Captain of the Port shall be notified upon completion of operations. Cargo transfer operations are not

permitted in the New Orleans General, Quarantine or Lower Kenner Bend Anchorages. Vessels at anchor in the Lower Kenner Bend Anchorage shall not exercise any cargo handling equipment. Bunkering and similar operations related to ship's stores are exempt from reporting requirements.

* * * * *

Dated: April 11, 2005.

R. F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 05–8458 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–019]

RIN 1625–AA09

Drawbridge Operation Regulations; Kent Island Narrows, Kent Island, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the S.R. 18–B Bridge, formerly known as U.S. Route 50/301 Bridge, over Kent Island Narrows, mile 1.0, in Kent Island, MD. The proposal would allow the bridge to open on signal on the hour and half-hour from 6 a.m. to 9 p.m., from May 1 through October 31. The proposed rule will allow for a more efficient flow of vessel traffic.

DATES: Comments and related material must reach the Coast Guard on or before June 13, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anton Allen, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–05–019, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Maryland Department of Transportation (MD DOT), who owns and operates this bascule bridge at mile 1.0 across Kent Island Narrows, in Kent Island, MD, requested a change to the current operating procedures set out in 33 CFR Part 117.561, which requires the draw to operate from May 1 through October 31 with the following restrictions: On Monday (except when Monday is a holiday) through Thursday (except when Thursday is the day before a Friday holiday), the draw shall open on signal on the hour from 7 a.m. to 7 p.m., but need not be opened at any other time; On Friday (except when Friday is a holiday) and on Thursday when it is the day before a Friday holiday, the draw shall open on signal on the hour from 6 a.m. to 3 p.m. and at 8 p.m., but need not be opened at any other time; On Saturday and on a Friday holiday, the draw shall open on signal at 6 a.m. and 12 noon and on signal on the hour from 3 p.m. to 8 p.m., but need not open at any other time; On Sunday and on a Monday holiday, the draw shall open on signal on the hour from 6 a.m. to 1 p.m. and at 3:30 p.m., but need not be opened at any other time. In addition, the draw shall open at scheduled opening times only if vessels are waiting to pass. At each opening, the draw shall remain open for a sufficient period of time to allow passage of all waiting vessels, and if a vessel is approaching the bridge and cannot reach the bridge exactly on the hour, the drawtender may delay the hourly opening up to ten minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

In 1997, MD DOT completed a new high-rise bridge along U.S. Route 50/301, which carries the majority of vehicle traffic, parallel to the drawbridge; this allowed the S.R. 18–B Bridge to operate with fewer restrictions to vessels. MD DOT has inadvertently operated the drawbridge on this proposed schedule since October 31, 1991.

The Coast Guard issued a temporary deviation from May 1, 2004 to July 29, 2004, to test the proposed regulation and solicit comments. The Coast Guard did not receive any comments during the temporary deviation.

This change is being requested to make the operation of the S.R. 18–B Bridge more efficient. In addition, the draw will provide for greater flow of vessel traffic than the current regulation.

Discussion of Proposed Rule

The Coast Guard proposes to change the regulations that govern the operation of the S.R. 18–B Bridge, formerly known as U.S. Route 50/301 Bridge, over Kent Island Narrows, mile 1.0, in Kent Island, MD. The Coast Guard proposes to insert this new specific regulation at 33 CFR § 117.561. The amended regulation would allow the draw of the bridge to open on signal on the hour and half-hour from 6 a.m. to 9 p.m., from May 1 through October 31. Operational information will be provided 24 hours a day by calling 1–800–543–2515.

The Coast Guard proposes to amend 33 CFR 117.561 by revising paragraphs (b) and (c).

The proposal would also change the name of the bridge from ''U.S. Route 50/301'' to ''S.R. 18–B''. The name change would accurately reflect the name of this bridge. The proposal would also remove ''commercial vessels'' from paragraph (c), as the Coast Guard does not want to distinguish between commercial and recreational vessels. Text modifications would be consistent with the proposed changes to be made in these paragraphs, as appropriate.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of

potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reason. The rule allows the S.R. 18–B Bridge to operate with fewer restrictions than the current regulation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations

for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.561 revise paragraphs (b) and (c) to read as follows:

§ 117.561 Kent Island Narrows.

* * * * *

(b) From May 1 through October 31, the draw shall open on signal on the hour and half-hour from 6 a.m. to 9 p.m., but need not be opened from 9 p.m. to 6 a.m.

(c) The draw shall open on signal for public vessels of the United States, state and local government vessels used for public safety purposes, and vessels in distress. Operational information will be available 24 hours a day by calling 1–800–543–2515.

Dated: April 18, 2005.

Ben R. Thomason III,

Captain, United States Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 05–8459 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD17–05–002]

RIN 1625–AA11 and 1625–AA87

Regulated Navigation Area and Security Zones; High Capacity Passenger Vessels in Alaska

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; re-opening of public comment period.

SUMMARY: In response to public comments on the proposed Regulated Navigation Area and Security Zones; High Capacity Passenger Vessels in Alaska, the Coast Guard is re-opening the public comment period an additional 30 days. These actions will afford the public additional time and opportunity to provide the Coast Guard with information regarding the proposed Regulated Navigation Area and Security Zones; High Capacity Passenger Vessels in Alaska.

DATES: Comments and related material must reach the Coast Guard on or before May 27, 2005.

ADDRESSES: You may mail comments and related material to District 17 (MOC), 709 West 9th St., Room 753, Juneau, Alaska 99801. District 17 (MOC) maintains the public docket for this rulemaking. Comments and related materials received from the public will become part of this docket and will be available for inspection or copying at District 17 (MOC), 709 West 9th St., Room 753, Juneau, Alaska 99801 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Matthew York, District 17 (MOC), 709 West 9th St., Room 753, Juneau, Alaska 99801, (907) 463–2821.

SUPPLEMENTARY INFORMATION:

Request for Comments

On March 9, 2005, D17 (MOC) published a **Federal Register** Notice seeking comments on the proposed Regulated Navigation Area and Security Zones; High Capacity Passenger Vessels in Alaska (70 FR 11595). The initial comment period was 30 days. A total of 19 public comments were received by the April 8, 2005, deadline, and all of them raised important issues on possible effects of the proposed rule.

Additionally, others persons commented to the Coast Guard and said they needed more time. To ensure the Coast Guard receives comments from interested parties and to allow more time for dissemination of the proposed rule, the Coast Guard is re-opening the public comment period for an additional 30 days.

We encourage you to submit comments and related material pertaining specifically to this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD17–05), and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the project officer at the addresses or phone numbers listed under **FOR FURTHER INFORMATION CONTACT**, but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. The recommendation made by this office may be affected by comments received.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a public meeting by writing to District 17 (MOC) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Dated: April 18, 2005.

James C. Olson,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 05–8349 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Charleston 05–036]

RIN 1625–AA00

Safety Zone; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary safety zone on the waters of the Wando River, Cooper River, and Charleston Harbor from Hobcaw Yacht Club to Charleston Harbor Marina and from the coast of Mount Pleasant to 150 yards offshore during the Lowcountry Splash swimming event. A temporary safety zone is necessary to prevent commercial or recreational boating traffic from transiting the racecourse. This temporary safety zone will allow the swimmers to safely participate in the event without interfering with vessel traffic.

DATES: Comments and related material must reach the Coast Guard on or before May 9, 2005.

ADDRESSES: You may mail comments and related material to Marine Safety Office Charleston, 196 Tradd St., Charleston, SC 29401. The Marine Safety Office maintains the public docket for this rulemaking. Comments and material received from the public,

as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at The Marine Safety Office Charleston between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Matthew Meskun, U.S. Coast Guard Marine Safety Office Charleston, South Carolina, at (843) 720–3240.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Charleston 05–036), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

If, as we anticipate, we make this temporary final rule effective less than 30 days after publication in the **Federal Register**, we will explain in that publication, as required by 5 U.S.C. (d)(3), our good cause for doing so.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to The Marine Safety Office Charleston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This regulation is needed to provide for the safety of life on navigable waters because of the inherent dangers associated with an open-water swimming event on a highly utilized body of water. The event will take place from 7 a.m. until 11 a.m. on May 21, 2005. The event sponsor will provide 30–40 kayaks to keep swimmers on course and assist the Coast Guard in patrolling the area. This rule creates an area that will prohibit non-participant vessels from entering the regulated area during the event without the permission of the Coast Guard Patrol Commander.

Discussion of Proposed Rule

This Coast Guard Captain of the Port Charleston, South Carolina, proposes to establish a temporary safety zone in order to provide a safe area for this swimming event. The event will take place from 7 a.m. until 11 a.m. on May 21, 2005. The safety zone will have patrol vessels to enforce the zone and the event sponsor will provide 30 to 40 kayaks in order to assist the swimmers and ensure they are staying within the designated areas. The safety zone is necessary to protect the swimmers from the dangers of vessel traffic in the vicinity of the race. Marine Safety Office Charleston will notify the maritime community when the safety zone is in effect via a broadcast notice to mariners on VHF Marine Band Radio, Channel 16 (156.8 MHz), or by actual notice from on-scene security assets enforcing the zone.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary, because the safety zone will only be in effect for a limited time and for a limited area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Wando River, Cooper River, and Charleston Harbor from 7 a.m. to 11 a.m., May 21, 2005. This proposed rule would not have a significant economic impact on a substantial number of small entities, because the rule will only be in effect for a limited time and for a limited area. Vessel traffic will be able to transit the waterway around the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add new temporary § 165.T07–036 to read as follows:

§ 165.T07–036 Safety Zone; Charleston, SC.

(a) *Regulated Area.* The Coast Guard is establishing a temporary safety zone on the waters of the Wando River, Cooper River, and Charleston Harbor from the Hobcaw Yacht Club to the Charleston Harbor Marina and from the coast of Mount Pleasant to 150 yards offshore.

(b) *Regulations.* In accordance with the general regulations in 165.23 of this part, anchoring, mooring or transiting the Regulated Area is prohibited unless authorized by the Coast Guard Captain of the Port or Coast Guard Patrol Commander.

(c) *Effective Date.* This rule is effective from 7 a.m. until 11 a.m. on May 21, 2005.

Dated: April 18, 2005.

D.W. Murk,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Charleston, South Carolina.

[FR Doc. 05–8351 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 270

[Docket No. RM 2002–1H]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing regulations for the delivery and format of records of use of sound recordings under two statutory licenses of the Copyright Act.

DATES: Comments are due no later than May 27, 2005.

ADDRESSES: If hand delivered by a private party, an original and ten copies of any comment should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Copyright Office General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If hand delivered by a commercial courier, an original and ten copies of any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and ten copies of any comment should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Comments may not be delivered by means of overnight

delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing such deliveries.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: This Notice of Proposed Rulemaking (''NPRM'') marks another step in the Copyright Office's continuing efforts to adopt regulations that require eligible digital audio services availing themselves of the statutory licenses set forth in 17 U.S.C. 112 and 114 to report their usage of sound recordings. On March 11, 2004, the Office published interim regulations in the **Federal Register** setting forth the types of information that must be kept by a digital audio service for each copyrighted sound recording it transmits to its users. 69 FR 11515 (March 11, 2004). This information constitutes a record of use of a sound recording. In this document, we propose regulations to establish the format in which each record of use must be kept, along with directions for delivery of the data to the Receiving Agent (SoundExchange, Inc.).[1]

Before discussing the substance of this NPRM, the Copyright Office notes that the Copyright Royalty and Distribution Reform Act of 2004, Public Law 108–419, goes into effect on May 31, 2005. Under this legislation, responsibility for notice and recordkeeping regulations under the section 112 and 114 statutory licenses is transferred from the Librarian of Congress and the Copyright Office to the new Copyright Royalty Judges (''CRJs''). See 17 U.S.C. 114(f)(4)(A) & 112(e)(4) (effective May 31, 2005). It is the intention of the Office to receive comments on the rules proposed below by May 27. It is anticipated that the CRJs will assume responsibility for this ongoing rulemaking proceeding as of May 31 and will consider this notice, the comments received in response to the notice, the prior record of this proceeding and any additional comments that they may solicit as they conclude this rulemaking.

I. Overview

Digital audio services transmit performances of copyrighted sound recordings of music for the listening enjoyment of the users of those services. In order to transmit these performances, however, a digital audio service must license the copyrights to each musical work, as well as the sound recording of the musical work.[2] With respect to the copyright in the sound recording, the digital audio service may seek to obtain a licensing agreement directly with the copyright owner or, if it is an eligible service,[3] may choose to license use of the sound recording through statutory licenses set forth in the Copyright Act, title 17 of the United States Code. There are two such licenses that enable an eligible digital audio service to perform a copyrighted sound recording for its listeners: Section 114 and section 112 of the Copyright Act. Section 114 permits an eligible digital audio service to perform copyrighted sound recordings to its listeners, provided that the terms and conditions set forth in section 114 are met—including the payment of a royalty fee. Section 112 permits an eligible digital audio service to make the digital copies of a sound recording that are necessary to transmit a sound recording to listeners, provided again that the terms and conditions set forth in section 112, including the payment of a royalty fee, are met.

The royalty fees collected under the two statutory licenses are paid to a central source known as a Receiving Agent. See 37 CFR 261.2. Before the Receiving Agent,[4] or other agents designated to receive royalties from the Receiving Agent, can make a royalty payment to an individual copyright owner, they must know how many times the eligible digital audio service made use of the sound recording and how many listeners received it. To obtain this information, both section 112 and section 114 direct the Librarian of Congress to prescribe regulations that identify the use of copyrighted sound recordings, as well as provide copyright owners with notice that a particular eligible digital audio service is making use of the section 112 and/or 114 license. See 17 U.S.C. 112(e)(4) and 114(f)(4)(A).

Interim regulations setting forth the types of information that constitute a record of use of a particular sound recording have already been adopted. 69 FR 11515 (March 11, 2004). Questions remain, however, regarding the organization and format of the record of use data and the acceptable means of delivering that data to the Receiving Agent, SoundExchange. Format and delivery are highly complex technical matters and have been a great source of contention between the parties that have submitted comments in this docket. It was hoped that representatives of copyright owners, performers, and licensees could resolve the issues through private negotiation, and the Copyright Office encourages continued discussions. Nevertheless, we must proceed with regulations. As with the interim regulations adopted last year, the regulations proposed in this document represent the baseline requirements. In other words, digital audio services are free to negotiate other formats and technical standards for data maintenance and delivery and may use those in lieu of regulations adopted by the Copyright Office, provided that SoundExchange finds them acceptable. We have no intention of codifying these variances in the future unless and until they come into such standardized use as to supersede the existing regulations.

II. Data Contained in a Record of Use

As noted above, the details of the types of information that must be reported for a record of use of a sound recording are set forth in the Interim Regulations. *Id.* For purposes of discussing the format a record of use must take, we summarize the required data elements.

Each record of use must contain at least six separate elements of data identifying the sound recording. The first four mandatory elements are: The name of the digital audio service reporting the record of use; the transmission category code that identifies under what royalty fee the sound recording was used; the name of the featured artist appearing on the sound recording; and the title of the sound recording. For the fifth and sixth reporting elements, services have an option on the information to report. For the fifth element—the identification of the sound recording—services must report the International Standard Recording Code (''ISRC'') solely, or in lieu of the ISRC, they must report the name of the album on which the used sound recording appears plus the name of the company that markets the album.

[1] For more information on the history of this rulemaking proceeding, including comments received from the public and the transcript of a public roundtable, go to *http://www.copyright.gov/carp/114/index.html.*

[2] Recorded music typically involves two separate copyrights. There is a copyright for the song itself—the lyrics and the music—and there is a separate copyright for the sound recording of the music. The copyright to the musical work typically belongs to the songwriter and/or his or her music publisher, and the copyright to the sound recording is owned by the record company that recorded it.

[3] These services are defined as preexisting subscription services, preexisting satellite digital audio radio services, business establishment services, nonsubscription services and new subscription services. These services are further discussed, *infra.*

[4] SoundExchange, Inc., originally created by the Recording Industry Association of America, Inc. on behalf of its member companies, is currently the Receiving Agent for receiving both section 112 and 114 royalties.

For the sixth element—total number of performances of the sound recording during the reporting period—services must report the actual total number of performances of the sound recording, or in lieu of that, the ''Aggregate Tuning Hours'' (total hours of programming transmitted by the service multiplied by the total number of listeners who have accessed the service during the reporting period) plus the name of the channel or program on which the sound recording was performed.

These are pieces of information that are required to create a report of use of a sound recording for the section 112 and/or 114 statutory license. We now turn to how this information is to be organized and formatted.

III. Organizing and Formatting the Data

The matter of the organization and format in which recordkeeping data is to be maintained for delivery to agents specified in the Copyright Office regulations to receive section 112 and 114 royalties is the subject of considerable disagreement between copyright owners and users. The first issue of dispute is whether services may elect to maintain records in either electronic or hard copy form, or whether reporting must be made in electronic form only. As noted above, the Copyright Office met with representatives of both owners and users after the May 10, 2002, roundtable to discuss the matter of format and solicited written proposals and conducted a public meeting. See 67 FR 59574 (September 23, 2002). During the course of those discussions, the Office expressed the view that transfer of hard copy records of performances would be cumbersome, expensive, and of little or no value to the royalty distribution process. We have not been persuaded otherwise by the written comments submitted in this docket or the subsequent discussions on format of data. Consequently, we are proposing that records of use must be in electronic format and that delivery of physical hard copies of records of use of sound recordings is not acceptable. We welcome further comment.

Having proposed that records of performances must be kept in electronic format, we turn to the details of organizing and formatting the data. Recognizing that there is a wide variance in the technical sophistication of services for creating records of use, the Copyright Office is proposing a two-track approach. For those services with minimal technical sophistication or resources, the Office is proposing that they supply record of use data in a standard electronic spreadsheet format. For those services that eschew use of a spreadsheet, the Office is proposing the technical requirements for formatting.

A. Use of a Spreadsheet

As noted above, there are likely a number of services—noncommercial broadcasters, for example—that lack the technical knowledge or ability to assemble their record of use data and format it according to the requirements set forth in subpart B of this section. For these types of services, the use of a widely marketed electronic spreadsheet, such as Microsoft's Excel or Corel's Quattro Pro, will be the most accessible and understandable method for completing a record of use. In order to make use of one of these spreadsheets, it is necessary for services to follow a template that organizes the data elements prescribed by the Interim Regulations in a way acceptable to the needs of SoundExchange. This necessitates that records of use maintained by a service in a spreadsheet format must be converted by the service into an American Standard Code for Information Interchange (''ASCII'') text file that conforms to the format specifications set forth below.

To facilitate the use of spreadsheets by services, the Office is proposing that SoundExchange post on its Web site a template for creating a record of use of sound recordings using Microsoft's Excel spreadsheet and Corel's Quattro Pro spreadsheet. SoundExchange may choose to post templates for other spreadsheet programs as well. A service may then use the corresponding spreadsheet software and enter its record of use data as provided by the template. Any technical support necessary for the establishment and use of spreadsheets is the responsibility of the service and not SoundExchange.

B. Format Specifications

What follows is a description of the format specifications that the Office proposes must be followed by services in preparing a record of use for delivery to SoundExchange, whether the records are in an electronic spreadsheet or some other organizational format chosen by the service. In proposing these regulations, the Office was guided by one of the few points of agreement to arise from the written and oral comments submitted in this docket. There are no universal methods of operation or uniform business standards for services making use of the section 112 and 114 licenses. Some services are highly automated, employing computers and software that allow them to readily generate play lists and detailed information in electronic format regarding the sound recordings that they perform. Others possess less sophisticated equipment that utilize varying data storage formats. Accordingly, the Office proposes that services be permitted to elect from several means of delivering their records of use to SoundExchange and that services be permitted to elect whether to submit files with or without headers. Services that wish to use different formats or different means of delivery may do so with the consent of SoundExchange.

The Office proposes to adopt organization and formatting requirements that represent the essentials for creating records of use of sound recordings and for the delivery of the records once they have been created. Our purpose in electing such approach is to provide SoundExchange with the information it needs to distribute royalties collected under the section 112 and 114 licenses, but also permit significant flexibility to those services which possess greater sophistication and can deliver data in faster and more convenient ways. Several of the commenters in this docket have stated that they have developed, or are in the process of developing, computer software and operating systems that will readily permit the recording and delivery of highly detailed information regarding the use of sound recordings. Provided that these software programs and operating systems are compatible with the systems of the receiving and designated agents collecting monies under the section 112 and 114 licenses, they should be permitted and encouraged. The Office encourages the continued use and development of alternatives that reduce the burden and operating expenses of both the services creating the data and the agents receiving it.

1. *File Naming.* Every file containing records of use must be appropriately named. The file name should contain the name of the service submitting the file followed by the start and end date of the reporting period. The start date and end date should be separated by a dash, and the file name should end with a file type extension of ''.txt''. Starting and ending dates should be in the format of day, month and year (DDMMYYYY) where DD is the two-digit day of the log period (beginning or end); MM is the two-digit month of the log period; and YYYY is the four-digit year of the log period (beginning or end). Single-digit days and months should be preceded by a zero (*e.g.* The first day of January of 2004 should be identified as 01012004).

The following is an example of a complete file name:
AcmeMusicCo10102004–30042004.txt.

2. *File type.* As discussed above, all files must be delivered in ASCII format. This applies to records of use that are maintained by a service in spreadsheet format, as well as any other data format that a service employs for its records of use. Files must not be attributed with any operating system settings that do not allow the file to be read using widely used Extract, Transform and Load (''ETL'') software (*e.g.* Oracle SQL Loader, Informatica, Sagent, Teradata, etc.).

3. *File compression.* Each report of use should be compressed in one of the following formats:

.zip—generated using utilities such as WinZip and/or UNIX zip command
.Z—generated using UNIX compress command
.gz—generated using UNIX gzip command

The zipped file should follow the same naming convention described in B1 above. However, instead of the ''.txt'' file extension, the file extension should be one of the above-described compression names.

4. *Delivery mechanism.* The Copyright Office is proposing four separate means for delivery of data to receiving and designated agents. As with the other provisions of these proposed regulations, parties are encouraged to negotiate alternative acceptable means of delivery if the prescribed methods discussed below are not acceptable.

Of the four acceptable methods of data delivery, two are by electronic delivery (FTP and e-mail) and two are by physical delivery (CD–ROM and Floppy Diskette). The Copyright Office has considered permitting delivery of data files via Internet Web site, but there appear to be significant issues regarding security of data delivered to Web sites and who would bear the burden of assuring security is maintained. We welcome further comment on this issue.

a. File Transfer Protocol (FTP). File Transfer Protocol is an electronic delivery mechanism that permits services using the section 112 and 114 licenses to deposit a computer file on a password-secured site operated by a receiving or designated agent. A service choosing FTP as the means of data file delivery must obtain a username and password, plus specific instructions for delivery, from the receiving or designated agent to which data is being sent. The Office is proposing that no later than 60 days from publication of final regulations SoundExchange be required to post on a publicly available portion of its Web site instructions for applying for a username and password and access and delivery instructions for FTP delivery. The Office proposes that once a written request has been made for a username and password, SoundExchange shall have 15 days to respond.

b. Electronic mail (e-mail). The other acceptable means of electronic delivery of record of use files is electronic mail (e-mail). A record of use file may be appended to an e-mail as an attachment and sent to the e-mail address identified for SoundExchange. The main body of the e-mail should identify: (1) The full name of the service and its full address; (2) the name of a contact person and that person's telephone number and e-mail address; (3) the start and end date of the reporting period; (4) the number of rows in the data file (if using headers, beginning with row 15; otherwise, beginning with row 1); and (5) the name of the file attached.

Unlike delivery to an FTP site, there are frequently file size limitations imposed by the Internet Service Provider offering the e-mail service. To avoid the problems likely to be associated with e-mailing large files, the Copyright Office is proposing to limit the size of file attachments to ten megabytes. Services may compress their files using the data compression methods described above in order to satisfy the ten-megabyte limitation.

Upon receipt of a report of use, the Office is proposing that SoundExchange acknowledge receipt of the e-mail as soon as possible through use of an automated reply e-mail to the delivering party.

c. Compact Disk-Read Only Memory (CD–ROM). A report of use contained on a Compact Disk-Read Only Memory (CD–ROM) should be delivered to the addresses identified below for SoundExchange. The data file must be sufficiently compressed to fit onto a single CD–ROM per reporting period. Each CD–ROM submitted shall be accompanied by a cover letter identifying: (1) The full name and address of the service; (2) the name of a contact person and that person's telephone number and e-mail address; (3) the start and end date of the reporting period; (4) the number of rows in the data file (if using headers, beginning with row 15; otherwise beginning with row 1); and (5) the name of the file attached.

d. Floppy diskette. A report of use contained on a floppy diskette that measures 3.5 inches in diameter should be delivered to the addresses identified for the receiving and designated agents. The diskette should be formatted using MS/DOS and be contained on a single diskette. No more than one floppy diskette may be submitted per reporting period. The diskette must be accompanied by a cover letter identifying: (1) The full name and address of the service; (2) the name of a contact person and that person's telephone number and e-mail address; (3) the start and end date of the reporting period; (4) the number of rows in the data file (if using headers, beginning with row 15; otherwise, beginning with row 1); and (5) the name of the file attached.

5. *Delivery addresses.* All reports of use should be delivered to SoundExchange at the following address: SoundExchange, Inc., 1330 Connecticut Avenue, NW., #330, Washington, DC 20036; (Phone) (202) 828–0120, (Facsimile) (202) 833–2141, (E-mail) *info@soundexchange.com; http://www.soundexchange.com.* For those services choosing to use CD–ROMs or floppy diskettes which require physical delivery to SoundExchange, the Copyright Office does not propose to specify whether delivery should be by hand, by courier or by U.S. mail. It is recommended, however, that services elect a type of delivery service that provides proof that the data file was sent in a timely fashion (*e.g.* certified mail, return receipt requested). It is the responsibility of the service to assure that its report of use is delivered on time to SoundExchange.

6. *File contents.* SoundExchange proposes that data files be reported with or without headers at the discretion of the service. The services find the option attractive; and consequently, the Office is inclined to permit the reporting of data either with or without headers.

In reporting data files, the issue arises as to how many separate files of data should be allowed for each reporting period. SoundExchange desires only one file per statutory license. Services, in particular broadcaster services, would like to submit multiple files of data and require the agent receiving data to match up, or overlay, the data from one file to another. For example, the National Religious Broadcasters Music Licensing Committee (''NRBMLC'') and Salem Communications Corp. submit that data identifying artists, song titles, albums and marketing labels could be reported in one file, while the data concerning the number of performances of the sound recordings could be reported in another file. Comments of NRBMLC and Salem Communications Corp. at 4–5 (submitted September 30, 2002). They submit that reporting in separate files is necessary because information regarding the number of

performances of sound recordings will come from a different source than the identifying information for the sound recordings. Allowing submission of multiple files of data will, in our view, unduly burden the agent processing the data and likely result in confusion and a high error rate in attempting to overlay the data. While reporting data in multiple files is undoubtedly easier for some services, they have not yet demonstrated that such a practice can be done efficiently without significant error and expense to the processing agent. We welcome further comment from the services as to a solution to this problem.

a. Files with headers. Submission of data with headers is an issue of considerable disagreement between SoundExchange and certain services using the section 112 and 114 licenses. See, *e.g.* Comments of SoundExchange at Tab A (submitted September 30, 2002); Comments of NRBMLC and Salem Communications Corp. at 4–6 (submitted October 10, 2002). While the parties agree that submission of files with headers should be permitted, the disagreements occur over the information to be contained in the headers. SoundExchange proposes that every report of use of a sound recording be prefaced with a header that contains 13 separate rows of information, most of which is devoted to identifying the service submitting the report. Certain services counter that submission of identification information for each report is redundant and unnecessary. Comments of NRBMLC and Salem Communications Corp. at passim (submitted October 10, 2002). They advocate a ''flexible'' approach to headers that only identifies the fields of data being reported (*i.e.* artist, song title, album, etc.) and permits such headers to be embedded in the file as the first line of data or provided in a separate file. Further, they advocate that output files generated by a service's music scheduling or digital automation software should be deemed acceptable if they contain headers identifying the data fields contained therein. Comments of NRBMLC and Salem Communications Corp. at Tab A, pp. 3–4 (submitted September 30, 2002).

In attempting to resolve this dispute, the Copyright Office observes that while a balancing of both owner and user interests is desirable, we are ultimately charged with the task of creating a system that will work. We have repeatedly encouraged the parties to negotiate the formatting of data for records of use but without success. Broadcaster services assert that their recordkeeping will be in multiple formats and that they cannot comply with a single standard. SoundExchange asserts that its system will not work unless the format it proposes is adopted. Because the statute requires us to adopt record of use regulations that will facilitate the distribution of royalties to copyright owners of sound recordings, we propose to adopt SoundExchange's recommendation for files with headers. In taking this approach, the Office observes that services which find the requirements for files with headers to be unduly burdensome may instead choose to submit their data without headers as provided in subsection (b) below.

A file with headers is a file that contains, among other things, information identifying the service, the period for which data is being provided and column headers that identify the data elements in each column. The following elements shall occupy the first 13 rows of each report of use in the order specified below.

(i) Name of service. The first row of a report with headers should contain the full name of the service making the report. Example: Acme Music Service, Inc. The maximum length and description of the service name should not exceed 255 alphanumeric characters.

(ii) Contact person. The second row of a report with headers should contain the full name of the contact person responsible for technical matters related to the submission of the report of use. The maximum length and description of the contact person should not exceed 255 alphanumeric characters.

(iii) Street address. The third row of a report with headers should contain the full business street address of the service submitting the report of use. The ''#'' symbol should be used to indicate suite or room numbers in the street address. The maximum length and description of the street address should not exceed 255 alphanumeric characters.

(iv) City, state and zip code. The fourth row of a report with headers should contain the city, state and zip code of the service submitting the report of use. The maximum length and description of the city, state and zip code should not exceed 255 alphanumeric characters.

(v) Phone number. The fifth row of a report with headers should contain the phone number of the contact person for technical issues of the service submitting the report. The maximum length and description of the phone number should not exceed 255 alphanumeric characters.

(vi) E-mail address. The sixth row of a report with headers should contain the e-mail address for the contact person for technical issues of the service submitting the report. The maximum length and description of the e-mail address should not exceed 255 alphanumeric characters.

(vii) Start of reporting period. The seventh row of a report with headers should contain the beginning date of the reporting period for the service submitting the report.[5] The date should include the day, followed by the month followed by the year (DDMMYYYY). Single-digit days or months should be preceded by a zero. Example: the first day of January 2006 should appear as 01012006. Thus, the length of the start of the reporting period should be eight numeric characters.

(viii) End of reporting period. The eighth row of a report with headers should contain the last or ending date of the reporting period (*i.e.* March 31, June 30, September 30 or December 31). As with the starting date, the date should be eight numeric characters with the day, month and year in that order.

(ix) Report generation date. The ninth row of a report with headers should contain the date that the report was generated by the service submitting the report. The date should be consistent with the file generation date tagged to the zipped container file or the report file and be expressed in the eight numeric DDMMYYYY format described above.

(x) Number of rows. The tenth row of a report with headers should contain the total number of rows beyond the fourteenth row in the file. The first 13 rows of each report file are for the header information only, and the fourteenth row is for the column headers described below. There is no limitation on the maximum length and description of the number of rows.

(xi) Text indicator. The eleventh row of a report with headers is the identification of the character that delineates the beginning and end of a text field. The text indicator is a one-character symbol that must be unique and never found in the report's data content. While the Copyright Office is not specifying the text indicator at this time, it is recommending the adoption of the carat (''^ '') symbol as an appropriate text indicator. The text indicator differs from a delimiter because it is only found at the beginning and end of a text field. Examples: ^Sound Recording Title ^; ^Featured Artist ^. Numbers and dates never have text indicators.

[5] The reporting periods are each calendar quarter of the year—*i.e.* the quarters beginning January 1, April 1, July 1 and October 1.

In addition, text indicators must be used even when certain text elements are not being reported. For example, if the service does not have information for the Marketing Label for a sound recording, the service should denote the missing data with a sequence of two consecutive text indicators to show that no text for the field is available (*i.e.* ''^^'').

(xii) Field delimiter. The twelfth row of a report with headers is the identification of the character that delineates the end of a data field. It differs from a text indicator because it is found at the end of both text fields and numeric fields. Field delimiters should not be placed at the end of the last data element in a row of data. The field delimiter character must be unique and never found in the report's data content. As with the text delimiter, the Copyright Office is not specifying the field delimiter at this time, but does recommend adoption of the pipe (''|'') as an appropriate field delimiter. Delimiters must be used even when certain elements are not being reported. In this case, the service should denote the blank data field with a delimiter in the order in which it would have appeared.

(xiii) Blank line. The thirteenth row of a report with headers is the carriage return and should be left blank.

The above describes the required first 13 rows of a report with headers. The fourteenth row should contain the report headers which are prescribed in the Interim Regulations (Featured Artist, Sound Recording Title, Marketing Label, etc.). See 37 CFR 270.1 *et seq.* Underscores (''_'') should appear in the report header between elements of each field name to show separation in the data field titles. Report header file names should be listed using the same text indicator and field delimiter indicated in the header.

The fifteenth row of the data file is where the actual records of use of sound recordings shall begin to appear. The data text fields should be reported in upper case characters. All featured performers should be reported as FIRST NAME_LAST NAME, where the name of the featured performer is an individual. Abbreviations are not permitted. Services should take care in providing data that conforms with the data that appeared on the physical product containing the sound recording that was supplied to or used by the service, and avoid using colloquialisms or short-handed methods of data entry (ex. ''JENNIFER_LOPEZ'' is the correct data entry for the artist, not ''J_LO'').

A carriage return must be at the end of each line and all data for one sound recording must be on a single line.

The following is a table summarizing the first 13 rows of a file with headers, including identification of the data that is required for each field, followed by an example.

Row No. (Do not include row numbers)	Field definition (Do not include field definition description)	Example
1	Service full name	ACME MUSIC SERVICE.
2	Contact Person	JOHN DOE.
3	Street Address	1000 WASHINGTON STREET.
4	City, State, Zip	WASHINGTON, DC 10000.
5	Phone	202–555–1212.
6	E-mail	*DOE@ACMEMUSIC.COM.*
7	Start of Reporting Period (DDMMYY)	01012006.
8	End of Reporting Period (DDMMYY)	31032006.
9	Report Generation Date (DDMMYY)	15042006.
10	Number of rows	60000.
11	Text Indicators	^.
12	Field delimiters	|.
13	Blank line.	

b. Files without headers. The previous regulation adopted by the Copyright Office for records of use by preexisting subscription services, 37 CFR 270.2(g), specifies the reporting of data without headers. These provisions have operated successfully, and the Office is proposing that they be adopted in this docket with some slight modifications to avoid duplication of information. Data files without headers should meet the following format requirements:

(1) ASCII delimited format, using pipe (|) characters as delimiters, with no headers or footers;

(2) Carets (^) should surround strings;

(3) No carets (^) should surround dates and numbers;

(4) A carriage return must be at the end of each line;

(5) All data for one record should be on a single line; and

(6) Abbreviations within data fields are not permitted (ex. The artist ''JOHN LEE HOOKER'' should not be abbreviated as ''J.L. HOOKER'').

All text fields should be reported in upper case characters (ex. ''THE ROLLING STONES''). All featured performers should be reported as FIRST NAME_LAST NAME, where the name of the featured performer is the name of an individual. Services should take care in providing data that conforms with the data that appeared on the physical product containing the sound recording that was supplied to or used by the service, and avoid using colloquialisms or short-hand methods of data entry (ex. ''JENNIFER _LOPEZ'' is the correct data entry for the artist, not ''J _LO'').

The following are two examples of a file without headers reporting a record of use of the sound recording ''Mixed Emotions'' by the Rolling Stones. In the first example, the Acme Music Service is reporting the Album Title and the Marketing Label in lieu of the International Sound Recording Code (''ISRC'') and is reporting Actual Total Performances in lieu of Aggregate Tuning Hours (''ATH''), Channel or Program Name and Play Frequency. See 69 FR 11515, 11524 (March 11, 2004). In the second example, My Music Service is reporting the ISRC in lieu of the Album Title and Market Label and is reporting ATH in lieu of the Actual Total Performances. *Id.*

Example #1

^ACME MUSIC SERVICE^|^F^|^THE ROLLING STONES^|^MIXED EMOTIONS^|^STEEL WHEELS^| ^VIRGIN^|^100.00^|||

Example #2

^MY MUSIC SERVICE^|^F^|^THE ROLLING STONES^|^MIXED EMOTIONS^|^ USSM12345678^|||7650.00 |^ROCK^|25.00

List of Subjects in 37 CFR Part 270

Copyright, Sound recordings.

Proposed Regulations

In consideration of the foregoing, the Copyright Office is proposing to amend part 270 of 37 CFR to read as follows:

PART 270—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

1. The authority citation for part 270 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Paragraph (a) in § 270.2 is revised to read as follows:

§ 270.2 Reports of use of sound recordings under statutory license for preexisting subscription services.

(a) *General.* This section prescribes the rules for the maintenance and delivery of reports of use for sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, by preexisting subscription services.

* * * * *

3. Section 270.3 is amended as follows:

a. By revising paragraph (a); and

b. By adding a new paragraph (d).

The revision and addition read as follows:

§ 270.3 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.

(a) *General.* This section prescribes rules for the maintenance and delivery of reports of use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, by nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services.

* * * * *

(d) *Format and Delivery.* (1) *Electronic format only.* Reports of use must be maintained and delivered in electronic format only, as prescribed in paragraphs (d)(2) through (8) of this section. A hard copy report of use is not permissible.

(2) *Use of spreadsheet.* Commercially available spreadsheets (Examples: Microsoft Excel, Corel Quattro Pro) may be utilized for maintaining reports of use: *Provided,* that the spreadsheet format is converted into an ASCII text file that conforms to the format specifications set forth below. SoundExchange shall post and maintain on its Internet website a template for creating a report of use using Microsoft's Excel spreadsheet and Corel's Quattro Pro spreadsheet and instruction on how to convert such spreadsheets to ASCII text files that conform to the format specifications set forth below. However, technical support and cost associated with the use of spreadsheets is the responsibility of the service submitting the report of use.

(3) *Delivery mechanism.* The data contained in a report of use may be delivered by File Transfer Protocol (FTP), e-mail, CD–ROM, or floppy diskette according to the following specifications:

(i) A service delivering a report of use via FTP must obtain a username, password and delivery instructions from SoundExchange. SoundExchange shall not later than [DATE 60 DAYS FROM DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] post on a publicly available portion of its Web site instructions for applying for a username, password and delivery instructions. SoundExchange shall have 15 days from date of request to respond with a username, password and delivery instructions.

(ii) A service delivering a report of use via e-mail shall append the report as an attachment to the e-mail. The main body of the e-mail shall identify:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, counting of the rows should begin with row 1; and

(E) The name of the file attached.

(iii) A service delivering a report of use via CD–ROM must compress the reporting data to fit onto a single CD–ROM per reporting period. Each CD–ROM shall be submitted with a cover letter identifying:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, counting of the rows should begin with row 1; and

(E) The name of the file attached.

(iv) A service delivering a report of use via floppy diskette must compress the reporting data to fit onto a single floppy diskette per reporting period. Each floppy diskette must measure 3.5 inches in diameter and be formatted using MS/DOS. Each floppy diskette shall be submitted with a cover letter identifying:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, the counting of the rows should begin with row 1; and

(E) The name of the file attached.

(4) *Delivery address.* Reports of use shall be delivered to SoundExchange at the following address: SoundExchange, Inc., 1330 Connecticut Avenue, NW., #330, Washington, DC 20036; (Phone) (202) 828–0120; (Facsimile) (202) 833–2141; (E-mail) *info@soundexchange.com*.

(5) *File naming.* Each data file contained in a report of use must be given a name by the service followed by the start and end date of the reporting period. The start and end date must be separated by a dash and in the format of day, month and year (DDMMYYYY). Each file name must end with the file type extension of ''.txt''. (*Example:* AcmeMusicCo01012005-31032005.txt).

(6) *File type and compression.* (i) All data files must be in ASCII format. Files may not be attributed with any operating system settings that do not allow the file to be read using widely used Extract, Transform and Load (ETL) software.

(ii) A report of use must be compressed in one of the following formats:

(A) .zip—generated using utilities such as WinZip and/or UNIX zip command;

(B) .Z—generated using UNIX compress command; or

(C) .gz—generated using UNIX gzip command.

Zipped files shall be named in the same fashion as described in paragraph (d)(5) of this section substituting the ''.txt.'' file extension with the applicable compression name described in this paragraph.

(7) *Files with headers.* (i) If a service elects to submit files with headers, the following elements, in order, must occupy the first 14 rows of a report of use:

(A) Name of service;

(B) Name of contact person;

(C) Street address of the service;

(D) City, state and zip code of the service;

(E) Telephone number of the contact person;

(F) E-mail address of the contact person;

(G) Start of the reporting period (DDMMYYY);

(H) End of the reporting period (DDMMYYYY);

(I) Report generation date (DDMMYYYY);

(J) Number of rows data file, beginning with 15th row;

(K) Text indicator;

(L) Field delimiter;

(M) Blank line; and

(N) Report headers (Featured Artist, Sound Recording Title, etc.).

(ii) Each of the rows described in paragraphs (d)(7)(i)(A) through (F) of this section must not exceed 255 alphanumeric characters. Each of the rows described in paragraphs (d)(7)(i)(G) through (I) of this section should not exceed eight alphanumeric characters. There is no limitation on the maximum length and description in paragraph (d)(7)(i)(J) of this section.

(iii) Data text fields, as required by paragraph (c) of this section, begin on row 15 of a report of use with headers. The data text fields must be in upper case characters and a carriage return must be at the end of each row thereafter.

(8) *Files without headers.* If a service elects to submit files without headers, the following format requirements must be met:

(i) ASCII delimited format, using pipe (|) characters as delimiters, with no headers or footers;

(ii) Carats (^) should surround strings;

(iii) No carats (^) should surround dates and numbers;

(iv) A carriage return must be at the end of each line;

(v) All data for one record must be on a single line;

(vi) Abbreviations within data fields are not permitted; and

(vii) All text fields must be reported in upper case characters.

Dated: April 22, 2005.

David O. Carson,

General Counsel.

[FR Doc. 05–8435 Filed 4–26–05; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03 –OAR–2005–VA–0001; FRL–7904–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; NO_X RACT Determinations for Four Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia to establish and require reasonably available control technology (RACT) for four major sources of nitrogen oxides (NO_X). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0001 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *campbell.david@epa.gov.*

D. Mail: R03–OAR–2005–VA–0001, Campbell David, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–VA–0001. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval of Virginia's NO_X RACT Determinations for Four Individual Sources, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: April 19, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–8440 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–VA–0002; FRL 7905–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision Establishing the Western Virginia VOC and NO_X Emissions Control Area, and the Enabling Authority for NO_X RACT Determinations in the Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia establishing a new volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions control area. This new area, entitled, the Western Virginia Emissions Control Area, consists of the City of Winchester and Frederick County which comprise the Northern Shenandoah Valley Ozone Early Action Compact area (EAC), and Roanoke County, Botetourt County, Roanoke City, and Salem City, which comprise the Roanoke EAC. EPA is also proposing to approve the enabling authority to implement NO_X Reasonably Available Control Technology (RACT) in the affected areas. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0002 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *campbell.dave@epa.gov.*

D. Mail: R03–OAR–2005–VA–0002, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–VA–0002. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Revision Establishing a New VOC and NO_X Emissions Control Area, and Providing the Enabling Authority for NO_X RACT Determinations in the Area, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: April 19, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–8436 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0068; FRL–7709–1]

Inert Ingredients; Proposal to Revoke Pesticide Tolerance Exemptions for Three CFC Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke exemptions from the requirement of a tolerance for three inert ingredients (dichlorodifluoromethane, dichlorotetrafluoroethane, and trichlorofluoromethane) because these substances are no longer in active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations and/or their use in pesticide products sold in the U.S. has been prohibited under the Clean Air Act for over a decade by EPA's ban on the sale or distribution, or offer for sale or distribution in interstate commerce of certain nonessential products that contain or are manufactured with ozone depleting compounds. These ingredients are subject to reassessment by August, 2006 under section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Upon the issuance of the final rule revoking the tolerance exemptions, five tolerances will be counted as ''reassessed'' for purposes of FFDCA's section 408(q).

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP–2005–0068, by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

Agency Website: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0068.

Mail: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0068.

Hand Delivery: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0068. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPP–2005–0068. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR

Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

C. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background and Statutory Findings

This proposed rule is issued pursuant to section 408(d) of FFDCA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

III. What Action Is the Agency Taking?

EPA, acting on its own initiative, is proposing to revoke five exemptions from the requirement of a tolerance for three inert ingredients because those substances are either no longer contained in pesticide products and/or their use in pesticide products sold in the U.S. has been prohibited for over a decade by EPA's ban on the sale or distribution, or offer for sale or distribution in interstate commerce of certain nonessential products that contain or are manufactured with ozone depleting compounds.

It is EPA's general practice to revoke those tolerances and tolerance exemptions for pesticide chemical residues (which includes both active and inert ingredients) for which there are no active registered uses under FIFRA, or for which there are no registered products to which the tolerance or tolerance exemption applies, or for tolerances or tolerance exemptions that have been superseded, unless a person commenting on the proposal indicates a need for the tolerance or exemption to cover residues in or on imported commodities or legally treated domestic commodities.

EPA believes this rationale also extends to ingredients whose use in pesticide products is prohibited as a result of EPA's 1994 ban, under the Clean Air Act, on certain non-essential aerosol and pressurized products containing ozone depleting compounds (see 40 CFR part 82, subpart C). Accordingly, while EPA records indicate that one of the ingredients subject to this notice, dichlorodifluoromethane, is still listed as an ingredient in a registered pesticide, EPA believes it is appropriate to propose the revocation of the tolerance exemption associated with this ingredient at this time because no product containing this ingredient may lawfully be sold or distributed in the U.S. Given that production and sale of such products was prohibited by the non-essential product ban since 1994, the Agency does not expect that there would be existing stocks in the hands of users. In the absence of lawful sale and distribution and the unlikelihood of existing stocks, EPA does not expect there to be residues resulting from application of a pesticide containing any of these ingredients, and any tolerance exemptions would therefore be superfluous.

Listed below are the three inert ingredients and their associated five tolerance exemptions that are subject to this notice. EPA is proposing that the revocation of these five tolerance exemptions will become effective on the date of the final rule's publication in the **Federal Register**.

1. Dichlorodifluoromethane, (40 CFR 180.910 and 930).

2. Dichlorotetrafluoroethane, (40 CFR 180.910).

3. Trichlorofluoromethane, (40 CFR 180.910 and 930).

These ingredients are currently subject to reassessment under section 408(q) of the FFDCA. Reassessment activities for such ingredients must be completed by August, 2006. Upon the issuance of the final rule revoking the tolerance exemptions, five tolerances will be counted as ''reassessed'' for purposes of FFDCA's section 408(q).

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerance exemptions established under section 408(d) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary

consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 14, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—AMENDED

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.910 [Amended]

2. Section 180.910 is amended by removing the following exemptions and any associated Limits and Uses from the table: Dichlorodifluoromethane, Dichlorotetrafluoroethane, and Trichlorofluoromethane.

§ 180.930 [Amended]

3. Section 180.930 is amended by removing the following exemptions and any associated Limits and Uses from the table: Dichlorodifluoromethane andTrichlorofluoromethane.

[FR Doc. 05–8186 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL 7904–8]

Central Characterization Project Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From Los Alamos National Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization by the Central Characterization Project (CCP) of transuranic (TRU) radioactive waste at the Los Alamos National Laboratory (LANL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are available for review in the public dockets listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**. In accordance with EPA's WIPP Compliance Criteria, we conducted an inspection of the Central Characterization Project (CCP) at LANL to verify that, using the systems and processes developed as part of the DOE Carlsbad Office's CCP, DOE can characterize TRU waste consistent with the Compliance Criteria. EPA performed this inspection the week of April 11, 2005. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before May 27, 2005.

ADDRESSES: Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2005–0105. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in

Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Rajani Joglekar, Office of Radiation and Indoor Air, (202) 343–9462. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2005–0105. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2005–0105. The system is an ''anonymous access'' system, which

means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2005–0105. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *By Mail.* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2005–0105.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2005–0105. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2005–0105.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR Part 191, Subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR Part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR Part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, D.C., and informational dockets in the State of New Mexico for public review and comment.

EPA performed an inspection of the TRU waste characterization activities performed by the DOE's Central Characterization Project (CCP) staff at LANL in accordance with Condition 3 of the WIPP certification. The CCP is a mobile characterization facility that DOE is developing to assist TRU waste generator sites with complex waste characterization activities. We will evaluate the adequacy, implementation, and effectiveness of the CCP technical activities contracted by LANL for characterization of sealed sources. The overall program adequacy and effectiveness of CCP/LANL documents will be based on the following DOE-provided documents: (1) CCP–PO–001—Revision 10, 2/24/05—CCP Transuranic Waste Characterization Quality Assurance Project Plan and (2) CCP–PO–002—Revision 11, 2/24/05—CCP Transuranic Waste Certification Plan. EPA has placed these DOE documents pertinent to the CCP/LANL inspection in the public docket described in **ADDRESSES**. They can be found online in EDOCKET ID No. OAR–2005–0105 and also in hard copy form in Docket A–98–49, Category II–A2. In accordance with 40 CFR 194.8, EPA is providing the public 30 days to comment on these documents. The inspection took place the week of April 11, 2005.

EPA will inspect the following technical elements for sealed sources: acceptable knowledge (AK) and data tracking and reporting via the WIPP Waste Information System (WWIS).

If EPA determines as a result of the inspection that the proposed CCP waste characterization processes and programs used at LANL adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to dispose of transuranic waste from LANL (via the CCP) at WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: April 21, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 05–8438 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7903–8]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 42

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes seven new sites to the NPL; all to the General Superfund Section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before June 27, 2005.

ADDRESSES: By electronic access: Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key Docket ID No. SFUND–2005–0002. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue NW; Washington, DC 20460, Attention Docket ID No. SFUND–2005–0002.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, Attention Docket ID No. SFUND–2005–0002. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays).

By E-Mail: Comments in ASCII format only may be mailed directly to *superfund.docket@epa.gov.* Cite the Docket ID No. SFUND–2005–0002 in your electronic file. Please note that EPA's e-mail system automatically captures your e-mail address and is included as part of the comment that is placed in the public dockets, and made available in EPA's electronic public docket.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone (703) 603–8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW; Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and

Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. At Federal Facilities Section sites, EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (*see* 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) The site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, *see* EPA's Internet site at *http://www.epa.gov/superfund*.

II. Public Review/Public Comment

A. May I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in public dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the publication of this proposed rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

The following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, (202) 566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; (617) 918–1225.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; (212) 637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; (215) 814–5364.

John Wright, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; (404) 562–8123.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; (312) 353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; (214) 665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; (913) 551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–B, Denver, CO 80202–2466; (303) 312–6463.

Jerelean Johnson, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; (415) 972–3094.

Sylvia Kawabata, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; (206) 553–1078.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

You may also access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr.* You may use EPA Dockets at *http://www.epa.gov/edocket* to access the index listing of the contents of the Headquarters docket, and to access those documents in the Headquarters docket. Once in the system, select ''search,'' then key in the Docket ID No. SFUND–2005–0002. Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed sites; a Documentation Record for the sites describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. May I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket (EPA Dockets at *http://www.epa.gov/edocket*) as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the EPA Dockets system, select ''search,'' then key in the Docket ID No. SFUND–2005–0002. For additional information about EPA's electronic public docket, visit EPA Dockets online at *http://www.epa.gov/edocket* or see the May 31, 2002 **Federal Register** (67 FR 38102).

J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In today's proposed rule, EPA is proposing to add seven new sites to the NPL; all to the General Superfund Section of the NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in Table 1 which follows this preamble.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order

12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

1. What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure

''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211

1. What Is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

2. Is This Rule Subject to Executive Order 13211?

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866 (See discussion of Executive Order 12866 above.)

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 42, GENERAL SUPERFUND SECTION

State	Site name	City/county
CO	Standard Mine	Gunnison National Forest.
GA	Peach Orchard Road PCE GW Plume.	Augusta.
NE	Garvey Elevator	Hastings.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 42, GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county
NH	Chlor-Alkali Facility (Former).	Berlin.
NC	Blue Ridge Plating Company.	Arden.
PA	Jackson Ceramix	Falls Creek.
TX	Pelican Bay Ground Water Plume.	Azle.

Number of Sites Proposed to General Superfund Section: 7.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: April 19, 2005.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 05–8322 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[WT Docket No. 04–435; DA 05–1015]

Facilitating the Use of Cellular Telephones and Other Wireless Devices Aboard Airborne Aircraft

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB) of the Federal Communications Commission (Commission) extends the periods for both the comment and reply comment deadlines established in the Notice of Proposed Rulemaking (*NPRM*) adopted by the Commission in the Airborne Cellular proceeding. The deadline to file comments is extended from April 11, 2005, to May 26, 2005, and the deadline to file reply comments is extended from May 9, 2005, to June 27, 2005. This action is taken to enable interested parties sufficient opportunity to review complex issues raised by the *NPRM* and to provide commenters a reasonable period of time to conduct the testing necessary to assess the potential interference issues associated with the use of pico cell systems and wireless devices onboard aircraft.

DATES: The agency must receive comments on or before May 26, 2005; and reply comments on or before June 27, 2005.

ADDRESSES: You may submit comments, identified by WT Docket No. 04–435, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- Email: To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Include the docket number(s) in the subject line of the message.
- Mail: Appropriate addresses for submitting comments and reply comments may be found in the **SUPPLEMENTARY INFORMATION** section of this document.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fcc.gov/cgb/ecfs/.*

FOR FURTHER INFORMATION CONTACT: Guy N. Benson, Wireless Telecommunications Bureau at 202–418–2946, or via the Internet at *Guy.Benson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Order (*Order*), DA 05–1015, in WT Docket No. 04–435, (2005 WL 771357 (F.C.C.)), adopted April 5, 2005, and released April 6, 2005, which extends the comment and reply comment filing deadlines in the Airborne Cellular proceeding. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Best Copy & Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 800–378–3160, facsimile 202–488–5563, or via e-mail at *fcc@bcpiweb.com.* The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov.*

Synopsis of the *Order*

1. On April 6, 2005, the WTB released an *Order* that extended the comment and reply comment filing deadlines established in the *NPRM* adopted by the Commission in this proceeding on December 15, 2004 in WT Docket No. 04–435; FCC 04–288 published at 70 FR 11916, March 10, 2005. In the *NPRM*, the Commission sought to replace or relax the prohibition on the airborne use of 800 MHz cellular telephones. In particular, the Commission proposed to allow the use of cellular telephones on airplanes so long as the phones are controlled by a pico cell installed onboard the aircraft. The Commission also sought comment on whether an industry-developed standard could facilitate the airborne use of cellular telephones while ensuring interference-free operations. Finally, the Commission sought comment as to whether cellular carriers should be allowed to provide service to airborne units on a secondary basis, subject to technical limitations aimed toward preventing harmful interference to airborne and terrestrial cellular operations.

2. Requests for an extension of time to file comments were filed by the Boeing Company, Nickolaus E. Leggett, jointly by Telenor Satellite Services, Inc. and ARINC, and by the U.S. Department of Justice/Federal Bureau of Investigations/Department of Homeland Security. In addition, Verizon Wireless filed comments in support of Boeing's request. The parties argue that the current comment period does not provide commenters with a sufficient length of time to conduct the testing and technical analysis necessary to submit thorough and meaningful responses.

Ordering Clauses

3. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 154(j), and §§ 0.131, 0.331, and 1.46 of the Commission's rules, 47 CFR 0.131,

0.331, and 1.46, the deadline for filing comments in response to the *NPRM*, published on March 10, 2005, in this proceeding, is extended to May 26, 2005, and the deadline for filing reply comments is extended to June 27, 2005.

Federal Communications Commission.

Linda Chang,

Associate Chief, Mobility Division.

[FR Doc. 05–8411 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1020; MB Docket No. 05–166; RM–11228]

Radio Broadcasting Services; McAlester, Okemah, and Wilburton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition jointly filed by Little Dixie Radio, Inc., KESC Enterprises, Inc., and Southeastern Oklahoma Radio, LLC, to reallot and change the community of license for Station KESC(FM) from Channel 279C1 at Wilburton, Oklahoma, to Channel 279C1 at Okemah, Oklahoma. To prevent the removal of the sole local aural service at Wilburton, the document proposes to reallot and change the community of license for Station KMCO(FM) from Channel 267C1 at McAlester, Oklahoma to Channel 267C1 at Wilburton, Oklahoma. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before May 31, 2005, and reply comments on or before June 14, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Richard R. Zaragoza, Esq., Veronica D. McLaughlin Tippet, Esq., Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037–1128.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–166, adopted April 6, 2005 and released April 8, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Pursuant to § 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest pertaining to the use of Channels 279C1 at Okemah or 267C1 at Wilburton. Channel 279C1 can be allotted to Okemah at reference coordinates of 35–14–22 and 96–18–48. Channel 267C1 can be reallotted to Wilburton at Station KMCO(FM)'s current site at reference coordinates 34–59–13 and 95–42–10.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 267C1 at McAlester, adding Okemah, Channel 279C1, and removing Channel 279C1 and adding Channel 267C1 at Wilburton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–8212 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1021; MB Docket No. 05–162; RM–11227]

Radio Broadcasting Services; Enfield, NH; Hartford, VT; Keeseville and Morrisonville, NY; White River Junction, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Nassau Broadcasting III, L.L.C. (''Petitioner''), licensee of FM Station WWOD, Channel 282C3, Hartford, Vermont, and FM Station WXLF, Channel 237A, White River Junction, Vermont. Petitioner requests that the Commission (1) allot Channel 282A to Enfield, New Hampshire as its first local radio broadcast service; (2) reallot Channel 282C3 from Hartford, Vermont, to Keeseville, New York, and modify the license of Station WWOD accordingly; (3) reallot Channel 237A from White River Junction, Vermont, to Hartford, Vermont and modify the license of Station WXLF accordingly; and (4) reallot Channel 231A from Keeseville, New York, to Morrisonville, New York, as that community's first local radio broadcast station. The coordinates for Channel 282A at Enfield, New Hampshire are 43–38–30 North Latitude and 72–08–42 West Longitude, with no site restrictions. The coordinates for Channel 282C3 at Keeseville, New York are 44–31–31 North Latitude and 73–31–07 West Longitude, with a site restriction of 3.8 kilometers (2.3 miles) northwest of Keeseville. The coordinates for Channel 237A at Hartford, Vermont, are 43–43–45 North Latitude and 72–22–22 West Longitude, with a site restriction of 8.1 kilometers (5.0 miles) north of Hartford. The coordinates for Channel 231A at Morrisonville, New York, are 44–40–19 North Latitude and 73–32–17 West Longitude, with a site restriction of 3.0 kilometers (1.9 miles) southeast of Morrisonville.

DATES: Comments must be filed on or before May 31, 2005, and reply comments on or before June 14, 2005.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve Petitioner's counsel, as follows: Stephen Diaz Gavin, Esq, Patton Boggs LLP; 2550 M Street, NW.; Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–162, adopted April 6, 2005 and released April 8, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

FM Station WWOD was granted a license to specify operation on Channel 282C3 in lieu of Channel 282A at Hartford, Vermont. (*See* BLH–19960919KA.) The FM Table of Allotments does not reflect this change.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Hampshire, is amended by adding Enfield, Channel 282A.

3. Section 73.202(b), the Table of FM allotments under New York, is amended by removing Channel 231A and adding Channel 282C3 at Keeseville; and adding Morrisonville, Channel 231A.

4. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 282A and adding Channel 237A at Hartford; removing White River Junction, Channel 237A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–8207 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 96–86; FCC 05–9]

Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission seeks comment on various proposals governing both technical and operational rules in the 764–776 MHz and 794–806 MHz public safety bands (700 MHz Public Safety Band).

DATES: Written comments are due on or before May 27, 2005, and reply comments are due on or before June 13, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Technical Information: Brian Marenco, *Brian.Marenco@FCC.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233. Legal Information: Roberto Mussenden, Esq., *Roberto.Mussenden@FCC.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Seventh Notice of Proposed Rulemaking,* FCC 05–9, adopted January 5, 2005 and released on January 7, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov.*

1. In the *Seventh Notice of Proposed Rulemaking,* the Commission seeks comment on:

(a) A proposal made by the Private Radio Section of the Wireless Communications Division of the Telecommunications Industry Association (TIA-PRS) to:

- Adopt tables describing ACP limits for 50 kHz and 100 kHz wideband operations;
- Relax the ACP requirement in the paired receive band for wideband and narrowband base station transmitters; and
- Extend the ACP limits to the 700 MHz Guard Band channels.

(b) A proposal by Access Spectrum, LLC (Access Spectrum) that the Commission clarify that the 700 MHz Guard Band ACP limits apply only at the boundaries of the 700 MHz Guard Band's licensee's authorized allocation.

(c) A proposal by Access Spectrum that the Commission establish scalable ACP limits which would apply to operations at any bandwidth;

(d) A joint proposal from Nortel/EADS Telecom North America that the Commission adjust the ACP limits for

12.5 kHz bandwidth operations in order to permit use of more spectrally efficient technologies;

(e) Proposals made by the Public Safety National Coordination Committee (NCC) asking that the Commission:

- Adopt a 700 MHz wideband data standard;
- Require wideband mobile and portable radios be capable of operating on all the wideband interoperability channels using the wideband data standard;
- Update the interoperability standards set forth at Section 90.548 of the Commission's rules to reflect updated industry standards;
- Update the encryption standards set forth at Section 90.553(e) of the Commission's rules to reflect updated industry standards; and
- Adopt minimum signal strength design criteria for public safety systems operating in the 700 MHz Public Safety Band.

(f) A tentative conclusion not to adopt the following NCC proposals:

- Requiring the use of standard channel nomenclature for interoperability channels;
- Requiring mobile and portable units certificated for use under part 90 of the rules be capable of displaying standardized interoperability channel labels alphanumerically if the radios are equipped with alphanumeric displays;
- Revising the term ''State Interoperability Executive Committee'' to ''Statewide Interoperability Executive Committee'';
- Mandating the use of State Interoperability Executive Committees; and extend their jurisdiction to interoperability channels in all public safety bands; and
- Making certain procedural changes to the Commission's review of 700 MHz regional plans;

(g) Clarifications to the trunking requirement of Section 90.537 of the Commission's rules.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Filing Procedures

3. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on the *Seventh Notice of Proposed Rulemaking* on or before May 27, 2005, and reply comments on or before June 13, 2005. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number. Parties may also submit an electronic comment by e-mail via the Internet. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

5. Parties who choose to file by paper must file an original and four copies of each filing. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. One copy of each filing (together with a diskette copy, as indicated below) should also be sent to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160.

6. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be attached to the original paper filing submitted to the Office of the Secretary. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft™ Word 2002 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor. In addition, commenters should send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160.

7. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, D C 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov.* Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail at the following e-mail address: *http://www.bcpiweb.com.* Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov.* For further information, contact Mr. Brian Marenco at (202) 418–0838, *brian.marenco@fcc.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

C. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this *Seventh Notice of Proposed Rulemaking.* Written public comments are requested regarding this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Seventh Notice of Proposed Rulemaking* provided in paragraph 3. The Commission will send a copy of the *Seventh Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Seventh Notice and Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

9. In the *Seventh Notice and Proposed Rulemaking*, we seek comment on:

- The TIA–PRS proposal recommending:

—Adopting tables describing ACP limits for 50 kHz and 100 kHz wideband operations;

—Relaxing the ACP requirement in the paired receive band for wideband and narrowband base station transmitters; and
—Extending the above mentioned rules to the 700 MHz Guard Band channels.

• The proposal by Access Spectrum that the Commission clarify that the 700 MHz Guard Band emission requirements masks only at the boundaries of the 700 MHz Guard Band's licensee's authorized allocation.

• The joint proposal from Nortel/EDS that the Commission adopts ACP requirements that correspond to any authorized bandwidth.

• The proposals by National Coordination Committee (NCC) that the Commission:
—Adopt a 700 MHz wideband standard;
—Update the interoperability standards set forth at Section 90.548 of the Commission's rules;
—Update the encryption standards set forth at Section 90.535(e) of the Commission's rules; and
—Adopt minimum signal strength requirements for public safety systems operating in the 700 MHz Public Safety band.

Legal Basis

10. Authority for issuance of this item is contained in Sections 1, 4(i), 7, 301, 302, 303, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 301, 302, 303, 337.

Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

11. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

12. *Governmental Entities.* The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

13. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services the number of government entities affected.

14. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

15. This *Seventh Notice of Proposed Rulemaking* does not propose a rule that will entail reporting, recordkeeping, and/or third-party consultation. The rule changes proposed in the *Seventh Notice of Proposed Rulemaking* provide technical adjustments to the Commission's existing requirements for Adjacent Channel Power or update the Commission's existing requirements to reference the latest industry standards.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. We believe the rule changes contained in this *Seventh Notice of Proposed Rulemaking* are technologically neutral and do not impact small entities differently than large entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

17. None.

II. Ordering Clauses

18. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419; interested parties may file comments on the *Seventh Notice of Proposed Rulemaking* on or before May 27, 2005, and reply comments on or before June 13, 2005.

19. It is further ordered, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Seventh Notice of Proposed Rulemaking* including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–8203 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2004–D011]

Defense Federal Acquisition Regulation Supplement; Radio Frequency Identification; Correction

AGENCY: Department of Defense (DoD).

ACTION: Correction to proposed rule.

SUMMARY: DoD is issuing a correction to the proposed rule published at 70 FR 20726–20729 on April 21, 2005, pertaining to package marking with passive radio frequency identification tags. The correction eliminates references to UHF Generation 2 tags, clarifies the definition of ''case'', and clarifies instructions for use of data syntax and standards.

DATES: The ending date for submission of comments is extended to June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350. Please cite DFARS Case 2004–D011.

Correction

PART 252—[CORRECTED]

In the issue of Thursday, April 21, 2005, on pages 20728 and 20729, section 252.211–7XXX is revised to read as follows:

252.211–7XXX Radio Frequency Identification.

As prescribed in 211.275–3, use the following clause:

Radio Frequency Identification (XXX 2005)

(a) *Definitions.* As used in this clause—

Advance shipment notice means an electronic notification used to list the contents of a shipment of goods as well as additional information relating to the shipment, such as order information, product description, physical characteristics, type of packaging, marking, carrier information, and configuration of goods within the transportation equipment.

Bulk commodities means the following commodities, when shipped in rail tank cars, tanker trucks, trailers, other bulk wheeled conveyances, or pipelines:

(1) Sand.

(2) Gravel.

(3) Bulk liquids (water, chemicals, or petroleum products).

(4) Ready-mix concrete or similar construction materials.

(5) Coal or combustibles such as firewood.

(6) Agricultural products such as seeds, grains, or animal feed.

Case means either a MIL–STD–129 defined exterior container within a palletized unit load or a MIL–STD–129 defined individual shipping container.

Electronic Product Code™ (EPC) means an identification scheme for universally identifying physical objects via RFID tags and other means. The standardized EPC data consists of an EPC (or EPC identifier) that uniquely identifies an individual object, as well as an optional filter value when judged to be necessary to enable effective and efficient reading of the EPC tags. In addition to this standardized data, certain classes of EPC tags will allow user-defined data. The EPC tag data standards will define the length and position of this data, without defining its content.

EPCglobal™ means a joint venture between EAN International and the Uniform Code Council to establish and support the EPC network as the global standard for immediate, automatic, and accurate identification of any item in the supply chain of any company, in any industry, anywhere in the world.

Exterior container means a MIL–STD–129 defined container, bundle, or assembly that is sufficient by reason of material, design, and construction to protect unit packs and intermediate containers and their contents during shipment and storage. It can be a unit pack or a container with a combination of unit packs or intermediate containers. An exterior container may not be used as a shipping container.

Palletized unit load means a MIL–STD–129 defined quantity of items, packed or unpacked, arranged on a pallet in a specified manner and secured, strapped, or fastened on the pallet so that the whole palletized load is handled as a single unit. A palletized load is not considered to be a shipping container.

Passive RFID tag means a tag that reflects energy from the reader/interrogator or that receives and temporarily stores a small amount of energy from the reader/interrogator signal in order to generate the tag response. Acceptable tags are—

(1) EPC Class 0 passive RFID tags that meet the EPCglobal Class 0 specification; and

(2) EPC Class 1 passive RFID tags that meet the EPCglobal Class 1 specification.

Radio Frequency Identification (RFID) means an automatic identification and data capture technology comprising one or more reader/interrogators and one or more radio frequency transponders in which data transfer is achieved by means of suitably modulated inductive or radiating electromagnetic carriers.

Shipping container means a MIL–STD–129 defined exterior container that meets carrier regulations and is of sufficient strength, by reason of material, design, and construction, to be shipped safely without further packing (*e.g.*, wooden boxes or crates, fiber and metal drums, and corrugated and solid fiberboard boxes).

(b)(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall affix passive RFID tags, at the case and palletized unit load packaging levels, for shipments of items that—

(i) Are in any of the following classes of supply, as defined in DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, AP1.1.11:

(A) Subclass of Class I—Packaged operational rations.

(B) Class II—Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(C) Class VI—Personal demand items (non-military sales items).

(D) Class IX—Repair parts and components including kits, assemblies and subassemblies, reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(ii) Are being shipped to—

(A) Defense Distribution Depot, Susquehanna, PA; or

(B) Defense Distribution Depot, San Joaquin, CA.

(2) Bulk commodities are excluded from the requirements of paragraph (b)(1) of this clause.

(c) The Contractor shall ensure that—

(1) The data encoded on each passive RFID tag are unique (*i.e.*, the binary number is never repeated on any contract) and conforms to the requirements in paragraph (d) of this clause;

(2) Each passive tag is readable at the time of shipment in accordance with MIL–STD–129P (Section 4.9.1.1) readability performance requirements; and

(3) The passive tag is affixed at the appropriate location on the specific level of packaging, in accordance with MIL–STD–129P (Section 4.9.2) tag placement specifications.

(d) *Data syntax and standards.* The Contractor shall use one or more of the following data constructs to write the RFID tag identification to the passive tag, depending upon the type of passive RFID tag being used in accordance with the tag construct details located at *http://www.dodrfid.org/tagdata.htm* (version in effect as of the date of the solicitation):

(1) Class 0, 64 Bit Tag—EPCglobal Serialized Global Trade Item Number (SGTIN), Global Returnable Asset Identifier (GRAI), Global Individual Asset Identifier (GIAI), or Serialized Shipment Container Code (SSCC).

(2) Class 0, 64 Bit Tag—DoD Tag Construct.

(3) Class 1, 64 Bit Tag—EPCglobal SGTIN, GRAI, GIAI, or SSCC.

(4) Class 1, 64 Bit Tag—DoD Tag Construct.

(5) Class 0, 96 Bit Tag—EPCglobal SGTIN, GRAI, GIAI, or SSCC.

(6) Class 0, 96 Bit Tag—DoD Tag Construct.

(7) Class 1, 96 Bit Tag—EPCglobal SGTIN, GRAI, GIAI, or SSCC.

(8) Class 1, 96 Bit Tag—DoD Tag Construct.

(e) *Receiving report.* The Contractor shall electronically submit advance shipment notice(s) with the RFID tag identification (specified in paragraph (d) of this clause) in advance of the shipment in accordance with the procedures at *http://www.dodrfid.org/asn.htm.*

(End of Clause)

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. 05–8369 Filed 4–26–05; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 70, No. 80
Wednesday, April 27, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to request an extension for a currently approved information collection in support of USDA's Biological Control Documentation Program dealing with documenting the importation and release of foreign biological control agents.

DATES: Comments on this notice must be received by July 1, 2005, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Glenn Hanes, ARS Biological Control Documentation Center, National Program Staff, National Agricultural Library, ARS, USDA, 10301 Baltimore Avenue, Beltsville, MD 20705–2351.

FOR FURTHER INFORMATION CONTACT: Glenn Hanes, ARS Biological Control Documentation Center, (301) 504–8137.

SUPPLEMENTARY INFORMATION:

Title: USDA Biological Shipment Record—Beneficial Organisms: Foreign/Overseas Source (AD–941); Quarantine Facility (AD–942); and Non-Quarantine (AD–943).

OMB Number: 0518–0013.

Expiration Date of Approval: October 11, 2005.

Type of Request: To extend a currently approved information collection.

Abstract: The purpose of the Biological Control Documentation Program is to record the importation (AD–941), release from quarantine (AD–942), and shipment and/or field release/recolonization (AD–942 and AD–943) of foreign/introduced beneficial organisms (pollinators and biological control agents for invasive species). The information collected is entered into the USDA ''Releases of Beneficial Organisms in the United States and Territories'' (ROBO) database, established in 1984. It is a cooperative program among USDA and other federal agencies, state governmental agencies, and U.S. universities. The use of the forms and the information provided is voluntary. The program is for the benefit of biological control research and action agency personnel, taxonomists, federal and state regulatory agencies, agricultural administrators, and the general public. The AD–941 has been computerized and efforts are underway to replace the other paper forms with computerized information collection, and when completed, only those units for which computerized input is not possible would use the forms.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1/12 hour per response.

Non-Federal Respondents: Universities, and state and local governments.

Estimated Number of Non-Federal Respondents: 40.

Estimated Number of Responses per Respondent: An average of 3 (range 1–30).

Estimated Total Annual Burden on Respondents: 10 hours.

Copies of the three forms used in this information collection, and information on the computerized form can be obtained from Glenn Hanes, ARS Biological Control Documentation Center, at (301) 504–8137.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to: Glenn Hanes, ARS Biological Control Documentation Center, National Program Staff, ARS, USDA, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD 20705–2351.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 11, 2005.

Antoinette A. Betschart,

Associate Administrator for Agricultural Research Service.

[FR Doc. 05–8357 Filed 4–26–05; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–026–1]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are holding a public meeting to solicit comments on the development of a national strategy concerning the use of vaccines in State/Federal/industry programs for the control of brucellosis, pseudorabies, and other program diseases.

DATES: The public meeting will be held on Friday, June 10, 2005, from 8 a.m. to 3 p.m.

ADDRESSES: The public meeting will be held at the Four Points by Sheraton Des Moines Airport, 1810 Army Post Road, Des Moines, IA.

FOR FURTHER INFORMATION CONTACT: Ms. Gera Ashton, Center for Veterinary Biologics, VS, APHIS, 1800 Dayton Road, Ames, IA 50010; phone (515) 663–7838, fax (515) 232–7120, or e-mail *gera.a.ashton@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) and its State and industry partners are approaching their goal of eradicating brucellosis and

pseudorabies from the national herd in the United States. As that goal becomes nearer, it is necessary to discuss issues such as the need for continued production of vaccine after eradication has been declared, changes in the availability of diagnostic reagents and test kits, and possible changes to the biosecurity level assigned to the causative agents for both diseases.

In October 2002, at a forum hosted by APHIS in St Louis, MO, representatives of State and Federal government, academia, veterinary biologics industry, producer groups, and animal disease researchers compiled a list of issues that they believed should be considered when developing regulations or policies concerning the use of vaccines beyond the end of eradication programs for diseases such as brucellosis and pseudorabies. It was suggested that APHIS seek additional input from State animal health officials, producer groups, and other interested persons prior to deciding the final policy. The report of the October 2002 meeting is available on the Internet at *http://www.aphis.usda.gov/vs/cvb/newlypublishedinfo.htm*.

We are holding this meeting to solicit additional input on the continued use of and need for vaccines and diagnostic reagents at the end of eradication for these and other program diseases.

This meeting is scheduled for Friday, June 10, 2005. The public meeting will begin at 8 a.m. and is scheduled to end at 3 p.m. but may end earlier if all persons wishing to speak have been heard. Those wishing to speak at the meeting must register in advance on or before June 1, 2005. To register to speak, please e-mail Ms. Gera Ashton at *gera.a.ashton@aphis.usda.gov*. Please provide the subject of your remarks and the approximate length of time that will be necessary. Depending on the number of speakers, limits may be imposed on the length of each presentation. Speakers may register on the day of the meeting between 7:30 and 8 a.m. The time allotted to each speaker will depend on the number of pre-registered speakers. If time permits, persons attending the meeting who have not registered to speak will be given an opportunity to make remarks after the registered speakers have concluded their comments. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 21st day of April 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–1982 Filed 4–26–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 05–009N]

Notice of Request for a New Information Collection (Consumer Complaint Monitoring System and the Food Safety Mobile Questionnaire)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a new information collection regarding its Consumer Complaint Monitoring System web portal and its electronic Food Safety Mobile questionnaire.

DATES: Comments on this notice must be received on or before June 27, 2005.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection request. Comments may be submitted by Mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

All submissions received must include the Agency name and docket number 05–009N.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2005_Notices_Index/index.asp*.

FOR FURTHER INFORMATION CONTACT: John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Consumer Complaint Monitoring System; the Food Safety Mobile Questionnaire.

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting a new information collection addressing paperwork and recordkeeping requirements regarding the Agency's Consumer Complaint Monitoring System Web portal and regarding its electronic Food Safety Mobile questionnaire.

FSIS tracks consumer complaints about meat, poultry, and egg products. Consumer complaints are usually filed because the food made the consumer sick, caused an allergic reaction, was not properly labeled (misbranded), or contained a foreign object. FSIS is developing a Web portal to allow consumers to electronically file a complaint with the Agency about a meat, poultry, or egg product. FSIS will use this information to look for trends that will enhance the Agency's food safety efforts.

FSIS uses a Food Safety Mobile, vehicle that travels throughout the continental United States, to educate consumers about the risks associated with the mishandling of food and the steps they can take to reduce their risk of foodborne illness. Organizations can request a visit from the FSIS Food Safety Mobile. To facilitate the scheduling of the Food Safety Mobile's visits, the Agency is planning to put an electronic questionnaire on its Web site. The questionnaire will solicit information about the person/organization requesting the visit, the timing of the visit, and the type of event at which the Food Safety Mobile is to appear.

FSIS has made the following estimates based upon an information collection assessment.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .084 hours per response.

Respondents: Consumers and organizations.

Estimated Number of Respondents: 650.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 55 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on April 22, 2005.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 05–8405 Filed 4–26–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chugach National Forest; Alaska; Kenai Winter Access

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Chugach National Forest will prepare an environmental impact statement (EIS) for developing the Kenai winter access management plan on the Seward Ranger District. The objective of the Kenai winter access management plan is to respond to the public's need for high quality winter recreation opportunities and access in the planning area that best meets the needs of past, present and future users of the area and surrounding areas.

DATES: Comments concerning the scope of the analysis to be most helpful should be received on or before May 25, 2005. The draft environmental impact statement is expected to be completed in August 2005 and the final environmental impact statement is expected to be completed in November 2005.

ADDRESSES: Send written comments to Kenai Winter Access, Chugach National Forest, 3301 C St., Suite 300, Anchorage, AK 99503. Comments may also be submitted by facsimile to (907) 743–9476 or by e-mail to *comments-alaska-chugach@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Rebecca Talbott, Public Affairs Staff Officer, Chugach National Forest, 3301 C St., Suite 300, Anchorage, AK 99503, (907) 743–9500. Sharon Randall, Planning Staff Officer, Chugach National Forest, 3301 C St., Suite 300, Anchorage, AK 99503, (907) 743–9500.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking information, comments and assistance from individuals, organizations, tribal governments, and Federal, State, and local agencies that are interested or may be affected by the proposed action. The public is invited to help identify issues and define the range of alternatives to be considered in the EIS. The range of alternatives will be based on the identification of significant public issues, management concerns, resource management opportunities, and plan decisions specific to Access Management within the scope of the Chugach National Forest Land and Resource Management Plan 2002 Revision (Forest Plan). Written comments identifying issues for analysis and range of alternatives are encouraged.

Background

On May 31, 2002, the Alaska (Region 10) Regional Forester signed the Record of Decision for the Revised Chugach Forest Plan. A number of individuals and organizations then appealed various parts of the decision, including the closure of the Carter-Crescent Lakes area to winter motorized access.

In January 2003, after reviewing the appeals and the administrative record, the Regional Forester withdrew that portion of the decision closing the Carter-Crescent Lakes area to winter motorized access. By withdrawing the decision for the Carter-Crescent Lakes area, management direction for that area remained as it was in the 1984 Chugach National Forest Plan. Under the 1984 Forest Plan, the area is open to winter motorized activities from December 1 to April 30 once there is adequate snow to protect resources.

The Regional Forester also directed the Chugach National Forest to reconsider this portion of the decision at the local level, with involvement from all interested parties, to make sure that the site-specific impacts of any closure were fully disclosed and that reasonable alternatives were considered.

As directed by the Regional Forester, the Forest Service began a site-specific analysis for the Carter-Crescent Lakes Area in late February and March of

2004. Several open house listening sessions specific to the Carter-Crescent Lakes area were held during that time in Anchorage, Seward, Cooper Landing, Moose Pass and Soldotna.

Many of the public comments received during that period suggested that in order to find a workable long-term solution to winter recreation access, the Forest Service would need to expand the planning area beyond just the Carter-Crescent Lakes area. As stated in many of the comments, an expansion of the planning area would allow greater creative management options such as considering timing, shared-use of split-season access periods across Forest Service lands on the Seward Ranger District.

After further consideration, the Chugach National Forest asked for and received approval from the Regional Forester to expand the planning area outside of the Carter-Crescent Lakes area.

Purpose and Need for Action

Due to the withdrawal of the Forest Plan decision regarding winter motorized recreation access for the Carter-Crescent Lakes area, the Forest needs to address how and where to manage for motorized and nonmotorized winter access. The purpose is to have a clear and concise plan for winter access on the Seward Ranger District that addresses the needs for forest management, public access and recreation use.

Proposed Action

The Chugach National Forest proposes to develop a winter access management plan for the Seward Ranger District by next winter season 2005/2006 in order to respond to the withdrawal of the 2002 Forest Plan decision regarding winter motorized access for the Carter-Crescent Lakes area.

Possible Alternatives

The range of alternatives considered will address significant issues and fulfill the purpose and need. A reasonable range of alternatives will be evaluated. Rationale will be given for any alternative(s) eliminated from detailed consideration. Alternatives will represent differing management scenarios based on quality and quantity of travel.

A ''no-action alternative'' is required by law. The no-action alternative under this analysis will assume winter motorized recreation access direction as described under the 2002 Forest Plan, except for the Carter-Crescent area which would continue to be managed for winter motorized recreation access as described under the 1984 Forest Plan. Additional alternatives will provide a range of ways to address and respond to public issues, management concerns and resource opportunities identified during the collaborative learning and scoping process.

Responsible Official: Joe Meade, Forest Supervisor, Chugach National Forest, 3301 C St., Suite 300, Anchorage, AK 99503, (907) 743–9500.

Nature of Decision To Be Made

The Forest Supervisor, as Responsible Official, may decide to (1) select the proposed action, (2) select one of the alternatives, (3) select one of the alternatives after modifying the alternative with additional mitigating measures or combinations of activities from other alternatives, or (4) select the no-action alternative. The decisions to be made within each of the alternatives will include whether an area is open, restricted, or closed to certain winter uses.

Scoping Process

The Forest Service accepted comments on this issue in February and March 2004 when scoping began for the Carter-Crescent Lakes area environmental analysis. Since then the project area has expanded to include the entire Seward Ranger District. In February 2005, a Collaborative Learning approach designed to facilitate open communication and idea sharing with local communities was implemented. This has been done via public workshops in order to develop management scenarios that may lead to a range of alternatives to be analyzed. Seven public workshops were held between February and April 2005 in the communities of Anchorage, Moose Pass, Seward and Soldotna.

Information about future public meetings will be announced in mailings, area media, and on the Chugach National Forest Internet site at *http://www.fs.fed.us./r10/chugach.*

Comment Requested

This notice of intent continues the scoping process which guides the development of the environmental impact statement. Comments received in response to this notice and previous request for comments, including names and addresses when provided, will become a matter of the public record available for inspection and copying.

All submissions from organizations and business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Upon completion of the Draft EIS, the document will be provided to the public for review and comment. Comments and Forest Service responses will be responded to in the Final EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to

refer to the Council on Environmental quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: April 20, 2005.

Joe L. Meade,

Forest Supervisor.

[FR Doc. 05–8400 Filed 4–26–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss Fred Burr 80 Project in the field, and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on April 26, 2005, 6:30 p.m.

ADDRESSES: The meeting will be held while driving South to Hamilton, on Highway 93, turning West on Tucker Road (Road #48), turning South on Road 48B connecting with Road #733. Send written comments to Daniel G. Ritter, Acting District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Daniel Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: April 20, 2005.

David T. Bull,

Forest Supervisor.

[FR Doc. 05–8396 Filed 4–26–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Strengthening America's Communities Advisory Committee

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Strengthening America's Communities Advisory Committee (the ''Committee'') will hold its second public meeting on Friday, May 13, 2005 in Kansas City, Missouri. At this meeting, the Committee will discuss policy issues relating to the President's Strengthening America's Communities Initiative (the ''Initiative''). During the Committee's first meeting in Fresno, California on April 15, 2005, the Committee received its charge to undertake a high-level examination of key policy issues pertaining to the Initiative. The second meeting will feature preliminary presentations to and deliberation by the Committee of work by the Committee's subcommittees on the policy issues presented to them.

DATES: Friday, May 13, 2005; beginning at approximately 8:30 a.m. (c.s.t.) and ending at approximately 12 p.m. (c.s.t.).

ADDRESSES: The meeting will take place at the Ewing Marion Kauffman Foundation Conference Center, 4801 Rockhill Road, Kansas City, Missouri 64110.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Olson, Designated Federal Officer of the Committee, Economic Development Administration, Department of Commerce, Room 7015, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4495; facsimile (202) 482–2838; e-mail: *saci@eda.doc.gov.* Please note that any correspondence sent by regular mail may be substantially delayed or suspended in delivery, since all regular mail sent to the Department of Commerce (the ''Department'') is subject to extensive security screening. For information about the Initiative, please visit the Department's Web site at *http://www.commerce.gov/SACI/index.htm.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and seating will be available, but may be limited. Reservations are not accepted. Requests for sign language interpretation and other auxiliary aids must be transmitted by facsimile or e-mail to the contact person listed above no later than May 5, 2005.

The prospective agenda for the Committee meeting is as follows:

(1) Presentation of expert witnesses selected by the Committee;

(2) Presentation and deliberation of subcommittee reports to the Committee; and

(3) Public comment.

Members of the public will have the opportunity to present oral comments to the Committee at this meeting. The Committee values most those public comments that bear upon issues under direct examination by the Committee, rather than issues unrelated to the Committee's current scope of discussion. Members of the public may also submit written statements to the contact person listed above at any time before or after the meeting. However, to facilitate distribution of written statements to Committee members, the Committee suggests that written statements be submitted to the Designated Federal Officer listed above by facsimile or e-mail no later than May 5, 2005.

This agenda is subject to change. A more detailed agenda (including details on the public comment portion of the meeting) will be posted on the Department's Web site at *http://www.commerce.gov/SACI/index.htm,* and a final agenda will be made available to the public the morning of the Committee meeting.

Dated: April 22, 2005.

David Bearden,

Deputy Assistant Secretary of Commerce for Economic Development.

[FR Doc. 05–8445 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Revolving Loan Fund Reporting Requirements

ACTION: Extension of an information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 27, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, HCHB Room

6625, 1401 Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dhynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Kenneth M. Kukovich, EDA PRA Liaison, Office of Management Services, HCHB Room 7227, Economic Development Administration, Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) provides investments that will help our partners (states, regions and local communities) across the nation create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and higher-skill, higher-wage jobs through world-class capacity building, infrastructure, business assistance, research grants and strategic initiatives.

EDA's revolving loan fund (RLF) reporting requirements (13 CFR § 308.14) are needed to ensure proper monitoring and compliance with program and administrative requirements, as set forth in EDA's authorizing legislation, the Public Works and Economic Development Act of 1965 (Pub. L. 89–136; 42 U.S.C. 3121 *et seq.*), as most recently amended by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373). EDA's new implementing regulations are currently under OMB review. In the interim, EDA's existing regulations are in force at 13 CFR Chapter III.

II. Method of Collection

The RLF reporting requirements are used by EDA to monitor grantees' progress in establishing loan funds, making initial loans, collecting and relending the proceeds from loans, and compliance with time schedules and federal requirements for administering grants, and compliance with civil rights, environmental and other requirements prior to grant disbursement. The RLF reporting requirements are based on OMB administrative requirements for federal grants, as implemented by Department of Commerce (DOC) regulations at 15 CFR parts 14, 24, and 29. EDA's regulations at 13 CFR Chapter III are intended to supplement the DOC requirements and are not intended to replace or negate such requirements.

III. Data

OMB Number(s): 0610–0095.

Agency Form Numbers: ED–209A, ED–209S and ED–209I.

Type of Review: Extension of a currently approved collection of information.

Affected Public: State, local or Indian tribal governments and not-for-profit organizations.

Estimated Number of Respondents: 134 for the RLF Annual Report; 462 for the RLF Semi-annual Report; 336 for the Annual RLF Income and Expense Statement.

Estimated Time per Response: 12 hours for RLF reporting requirements (includes the RLF Annual Report and RLF Semi-annual Report at 12 hours each, and 2 hours per Annual RLF Income and Expense Statement).

Estimated Total Annual Burden Hours: 13,368 hours.

Estimated Total Annual Cost: $819,452.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; and they also will become a matter of public record.

Dated: April 21, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–8364 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Foreign Trade Zones Board

[Order No. 1383]

Grant of Authority for Subzone Status; Callaway Golf Company (Golf Clubs), Carlsbad, California

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign–Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, an application from the City of San Diego, California, grantee of FTZ 153, for authority to establish special–purpose subzone status for the golf club manufacturing facilities of Callaway Golf Company, in Carlsbad, California, was filed by the Board on August 27, 2004, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 40–2004, 69 FR 53885, 9–3–2004); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to restriction;

Now, therefore, the Board hereby grants authority for subzone status at the golf club manufacturing facilities of Callaway Golf Company, in Carlsbad, California (Subzone 153D), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a restriction requiring that all products, which are made of textile materials, classified within Textile Categories 331/631/831, 359/459/659/859, 363/369/669, and 670/870 must be admitted under privileged foreign status (19 CFR § 146.41) or domestic status (19 CFR § 146.43).

Signed at Washington, DC, this 15th day of April, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–8425 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1384]

Expansion of Foreign–Trade Zone 40, Cleveland, Ohio, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland–Cuyahoga County Port Authority, grantee of Foreign–Trade Zone 40, submitted and application to the Board for authority to expand FTZ 40 to include a site (42 acres) at the Broad Oak Business Park (Site 12) located in the Village of Oakwood, Ohio, within the Cleveland Customs port of entry (FTZ Docket 19–2004; filed 5/5/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 26357, 5/12/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:The application to expand FTZ 40 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000–acre activation limit for the overall zone project.

Signed at Washington, DC, this 15th day of April, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–8426 Filed 4–26–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1385]

Expansion and Reorganization of Foreign–Trade Zone 40,Cleveland, Ohio, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland–Cuyahoga County Port Authority, grantee of Foreign–Trade Zone 40, submitted an application to the Board for authority to expand Site 7B (Progress Drive Business Park) and Site 10 (Solon Business Park) to include additional parcels and to consolidate, reorganize and renumber the general–purpose zone sites within the Cleveland Customs port of entry (FTZ Docket 20–2004; filed 5/5/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 26356, 5/12/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40 and to consolidate, reorganize and renumber the general–purpose zone sites is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000–acre activation limit for the overall zone project.

Signed at Washington, DC, this 15th day of April, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commercefor Import Administration,Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–8427 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1386

Expansion of Foreign–Trade Zone 40, Cleveland, Ohio, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland–Cuyahoga County Port Authority, grantee of Foreign–Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40–Site 6 to include the Strongsville Commerce Center (Site 6C, 212 acres) located in Strongsville, Ohio, within the Cleveland Customs port of entry (FTZ Docket 25–2004; filed 6/10/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 34643, 6/22/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000–acre activation limit for the overall zone project.

Signed at Washington, DC, this 15th day of April, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–8428 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–412–801]

Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 27, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0180 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published the antidumping duty orders on ball bearings from France, Germany, Italy, Japan, Singapore, and the United Kingdom and on spherical plain bearings and parts thereof from France in the **Federal Register** (54 FR 20900). At the request of interested parties, the Department initiated administrative reviews of the antidumping duty orders on antifriction bearings and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom for the period May 1, 2003, through April 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 39409 (June 30, 2004). The preliminary results of reviews are currently due no later than April 27, 2005. See *Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews*, 70 FR 3676 (April 4, 2005).

Extension of Time Limit for Preliminary Results of Reviews

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limit because of the necessity for additional time to analyze comments made by interested parties regarding the model–match methodology at meetings held with the Acting Assistant Secretary for Import Administration on April 18, 2005, and April 19, 2005. Therefore, we are extending the time period for issuing the preliminary results of these reviews by an additional nine days, until May 6, 2005, which is 340 days after the last day of the anniversary month of the order.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: April 20, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1992 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–201–802

Gray Portland Cement and Clinker From Mexico: Notice of Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 27, 2005.

FOR FURTHER INFORMATION CONTACT: Jeffrey Frank or Hermes Pinilla, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0090 and (202) 482–3477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 1990, the Department of Commerce (the Department) published an antidumping duty order on gray portland cement from Mexico (see 55 FR 35371). In August 2004, the petitioner, the Southern Tier Cement Committee, requested a review of CEMEX S.A. de C.V. (CEMEX), CEMEX's affiliate, GCC Cemento, S.A. de C.V. (GCCC). In addition, in August 2004, CEMEX and GCCC requested reviews of their own sales during the period of review. On September 22, 2004, the Department published in the **Federal Register** the *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* (69 FR 56745) in which it initiated an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The period of review is August 1, 2003, through July 31, 2004. The preliminary results of this administrative review are currently due no later than May 3, 2005.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act also provides that the Department may extend the 245-day period up to 365 days if it determines that it is not practicable to complete the review within the foregoing time period.

This review involves complex issues regarding sales of a new type of cement and the comparability of these sales, and the Department needs additional time to consider these issues. For these reasons, the Department has determined that it is not practicable to complete the preliminary results within the time limit mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limit for completion of the preliminary results until no later than August 31, 2005, which is 365 days after the last day of the anniversary month of the date of publication of the order. The Department intends to issue the final results of review 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: April 20, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1991 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Notice of Rescission of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from Nucor Corporation, International Steel Group Inc. (ISG) and United States Steel Corporation (USSC) (collectively, petitioners), the U.S. Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from the Netherlands for Corus Staal BV (Corus) for the period November 1, 2003, through October 31, 2004. No other interested party requested a review of Corus for this period of review. For the reasons discussed below, the Department is rescinding this administrative review.

EFFECTIVE DATE: April 27, 2005.

FOR FURTHER INFORMATION CONTACT: David Cordell at (202) 482–0408 or Robert James at (202) 482–0649, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from the Netherlands, (69 FR 63359). On November 30, 2004, we received requests from petitioners USSC, ISG and Nucor to conduct an administrative review of Corus' sales of certain hot–rolled carbon steel flat products to the United States during the period November 1, 2003, through October 31, 2004. On December 27, 2004, the Department initiated an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from the Netherlands for the period November 1, 2003, through October 31, 2004, in order to determine whether merchandise imported into the United States was sold at less than fair value by Corus. *See Initiation of Antidumping and Countervailing Duty Administrative Review and Requests for Revocations in Part*, 69 FR 77181 (December 27, 2004).

On March 28, 2005, ISG withdrew its request for review. In response to requests from USSC and Nucor, the Department extended the 90-day deadline for parties to withdraw their requests for review. *See* Letter to USSC, March 28, 2005 and Memos to the File dated March 30, 2005, and March 31, 2005. On April 4, 2005, both USSC and Nucor withdrew their requests for the instant review.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. As all parties that requested this review have withdrawn those requests, this review is rescinded. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection upon the lifting of the Preliminary Injunction which was issued by the Court of International Trade on March 19, 2002.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: April 21, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1994 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of The Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Manufacturing Council will hold a full Council meeting to discuss topics related to the state of manufacturing. The Manufacturing Council is a Secretarial Board at the Department of Commerce, established to ensure regular communication between Government and the manufacturing sector. This will be the fourth meeting of The Manufacturing Council and will include updates by the Council's three subcommittees. For information about the Council, please visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council.htm*.

DATES: May 11, 2005.

TIME: 10:15 a.m.

ADDRESSES: 311 Cannon House Office Building, Washington, DC 20515. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than May 4, 2005, to The Manufacturing Council, Room 4043, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (Phone: 202–482–1369). The Executive Secretariat encourages interested parties to refer to The Manufacturing Council Web site (*http://www.manufacturing.gov/council/*) for the most up-to-date information about the meeting and the Council.

Dated: April 22, 2005.

Sam Giller,

Executive Secretary, The Manufacturing Council.

[FR Doc. 05–8492 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On April 21, 2005 the binational panel issued its corrected decision in the review of the final injury determination on remand made by the International Trade Commission, respecting Carbon and Certain Alloy Steel Wire Rod from Canada Final Injury Determination, Secretariat File No. USA–CDA–2002–1904–09. The binational panel affirmed the International Trade Commission's determination on remand. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision: The panel affirmed the International Trade Commission's determination on remand respecting Carbon and Certain Alloy Steel Wire Rod from Canada. The panel has directed the Secretary to issue a Notice of Final Panel Action on the 11th day following the issuance of the decision.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. E5–1993 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042205A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to issue an EFP that would allow four vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the NE multispecies rolling closure area restrictions and the NE multispecies minimum mesh size requirements. The applicant proposes to conduct a study of an inclined separation panel, a bycatch reduction device, in order to examine the effectiveness of this type of gear at separating the catch of Atlantic cod, and other roundfish, from flatfish. The EFP would allow these exemptions for four commercial vessels for a combined total of 23 days at sea. All experimental work would be monitored by Manomet Center for Conservation Sciences (Manomet) personnel.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before May 12, 2005.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA5–86@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on Manomet EFP Proposal for Inclined Separator Panel Study (DA5–86).'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Manomet EFP Proposal for inclined Separator Panel Study (DA5–86).'' Comments may also be sent via fax to 978–281–9135.

FOR FURTHER INFORMATION CONTACT: Peter Cooper, Fishery Management Specialist, phone: 978–281–9122, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted by Manomet on March 16, 2005. The EFP would exempt four federally permitted commercial fishing vessels from the following requirements in the FMP: NE multispecies Gulf of Maine (GOM) rolling closure area restrictions specified at 50 CFR 648.81(f)(1)(iii) and (f)(1)(iv) to provide an optimum mixture of cod and flatfish for testing the experimental gear; and the NE multispecies minimum mesh size requirements specified at § 648.80(a)(3)(ii) in order to allow the use of 4–inch (10.2–cm) mesh within the separator panel.

The goal of this study is to assess the applicability of this separator panel to separate cod and other roundfish from flatfish in the GOM NE multispecies fishery. Researchers would test a trawl net consisting of 6.5–inch (16.5–cm) diamond mesh throughout the net and codend, with a 4–inch (10.2–cm) diamond mesh inclined separation panel sewn into the end of the extension and the codend. The angle of the inclined panel and number of meshes in the panel would be initially set at values implemented in the Irish Sea fisheries that have been proven effective at separating cod and other roundfish from flatfish.

The study would be conducted from May 1, 2005, through July 15, 2005.

Inclined separation panel testing would take place aboard four different fishing vessels totaling 92, 1-hour trawls conducted over 23 days at sea. Fishing activities would take place within 30-minute squares 123, 124, 138, 139, 140, 146, and 147, outside of year-round closure areas. All legal catch would be landed and sold, consistent with the current daily and trip possession and landing limits. Undersized fish would not be retained at any time. The participating vessels would be required to report all landings in their Vessel Trip Reports.

The main species expected to be caught under this EFP are: 770 lb (350 kg) of Atlantic cod; 618 lb (281 kg) of monkfish; 270 lb (123 kg) of American plaice; 44 lb (20 kg) of haddock; 44 lb (20 kg) of winter flounder; 44 lb (20 kg) of witch flounder; 44 lb (20 kg) of yellowtail flounder; 44 lb (20 kg) of summer flounder; 2,640 lb (1,198 kg) of skate; 440 lb (200 kg) of crab; 440 lb (200 kg) of lobster; and 110 lb (50 kg) of sculpin. The applicant could request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions could be granted without further notice if they are deemed essential to facilitate completion of the proposed research and would result in only a minimal change in the scope or impact of the initially approved EFP request. The EFP could be made effective following publication of the EFP application in the **Federal Register**, with a 15-day public comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 22, 2005.

Alan D. Risenhoover

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–1989 Filed 4–26–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C 552a), as amended. The Office of the Secretary is proposing to alter the existing system of records by expanding the purposes, categories of individuals covered, categories of records being maintained, and by adding three new routine uses.

DATES: The changes will be effective on May 27, 2005, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 601–4722, extension 110.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted April 18, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 18, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

DHA 07

SYSTEM NAME:

Military Health Information System (August 13, 2004, 69 FR 50171).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete last sentence for Secondary location and replace with 'Program Executive Officer, Joint Medical Information Systems Office, 5109 Leesburg Pike, Suite 900, Skyline Building 6, Falls Church, Virginia 22041–3241. For a complete listing of all facility addresses write to the system manager.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to the end of the entry 'Uniformed services medical beneficiaries who receive or have received care at one or more dental treatment facilities or other system locations including medical aid stations, Educational and Development Intervention Services clinics and Service Medical Commands. Uniformed service members serving in a deployed status and those who receive or received care through the Department of Veterans Affairs (VA)'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Add a second paragraph to 'CLINICAL ENCOUNTER DATA' as follows: 'Electronic data regarding dental tests, pharmacy prescriptions and reports, data incorporating medical nutrition therapy and medical food management, data for young MHS beneficiaries eligible for services from the military medical departments covered by the Individuals with Disabilities Education Act (IDEA). Data collected within the system also allows beneficiaries to request an accounting of who was given access to their medical records prior to the date of request. It tracks disclosure types, treatment, payment and other Health Care Operations (TPO) versus non-TPO, captures key information about disclosures, process complaints, process and track request for amendments to records, generates disclosure accounting and audit reports, retains history of disclosure accounting processing'.

ADD TWO NEW ENTRIES AFTER 'CLINICAL DATA' AS FOLLOWS:

Occupational and Environmental Exposure Data: Electronic data supporting exposure-based medical surveillance; reports of incidental exposures enhanced industrial hygiene risk reduction; improved quality of occupational health care and wellness programs for the DoD workforce; hearing conservation, industrial hygiene and occupational medicine programs within the MHS; and timely and efficient access of data and information to authorized system users'.

Medical and Dental Resources: Electronic data used by the MHS for resource planning based on projections of actual health care needs rather than projections based on past demand'.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 5 U.S.C. 301, Department Regulation; 10 U.S.C., Chapter 55; Pub. L. 104–91, Health Insurance Portability and Accountability Act of 1996; DoD 6025.18–R, DoD Health Information Privacy Regulation; 10 U.S.C. 1071–1085, Medical and Dental Care; 42 U.S.C. Chapter 117, Sections 11131–11152, Reporting of Information; 10 U.S.C. 1097a and 1097b, TRICARE Prime and TRICARE Program; 10 U.S.C. 1079, Contracts for Medical Care for

Spouses and Children; 10 U.S.C. 1079a, Civilian Health and Medical Program for the Uniformed Services (CHAMPUS); 10 U.S.C. 1086, Contracts for Health Benefits fore Certain Members, Former Members, and Their Dependents; DoD Instruction 6015.23, Delivery of Healthcare at Military Treatment Facilities (MTFs); DoD 6010.8–R, CHAMPUS; 10 U.S.C. 1095, Collection from Third Party payers Act; and E.O. 9397 (SSN)'.

PURPOSE(S):

Add five new paragraphs as follows: 'The electronic medical records portion of the system (EMR) addresses documenting and tracking environmental health readiness data located in arsenals, depots, and bases. Data collected and maintained is used to assess the medical and dental deployability of Service members for the purposes of pre- and post-deployment and any changes during and after deployment.

Data collected and maintained in the EMR system is used to perform disease management and the prevention of exacerbations and complications using evidence-based practice guidelines and patient empowerment strategies. Data collected and maintained in the EMR system s used in proactive health intervention activities for the active duty and non-active duty beneficiary population. Data collected and maintained is used to capture data on hearing loss and occupational exposures, to perform noise exposure surveillance and injury referrals to assess auditory readiness.

Data collected and maintained in the EMR system s used to establish individual longitudinal exposure records using pre-deployment exposure records. These records are used as a base line against new exposures to facilitate post-deployment follow-up and workplace injury root-cause analysis in an effort to mitigate loss work tie within the DoD.

Data collected within and maintained in the system is used for patient administration (including registration, admission, disposition and transfer); patient appointing and scheduling' delivery of managed care; workload and medical services accounting; and quality assurance.

Data collected will be provided to Special Oversight Boards created by applicable DoD authorities to investigate special circumstances and conditions resulting from a deployment of DoD personnel to a theater of operations.

Routine users of records maintained in the system, including categories of users and the purposes of such uses:

Add three new paragraphs as follows:— 'To the National Research Council, National Academy of Sciences, National Institutes of Health, Armed Forces Institute of Pathology, and similar institutions for authorized health research in the interest of the Federal Government and the public. When not essential for longitudinal studies, patient identification data shall be deleted from records used for research studies. Facilities/activities releasing such records shall maintain a list of all such research organizations and an accounting disclosure of records released thereto.

To local and state government and agencies for compliance with local laws and regulations governing control of communicable diseases, preventive medicine and safety, child abuse, and other public health and welfare programs.

To federal offices and agencies involved in the documentation and review of defense occupational and environmental exposure data, including the National Security Agency, the Army corps of Engineers, National Guard, and the Defense Logistics Agency.

Add a Note 2 after Note 1 as follows:

Note 2: Personal identity, diagnosis, prognosis of treatment information of any patient maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, except as provided in 42 U.S.C. 290dd–2, will be treated as confidential and will be disclosed only for the purposes and under the circumstances expressly authorized under 42 U.S.C. 290dd–2. The ''Blanket Routine Uses'' do not apply to these types of records.

* * * * *

DHA 07

SYSTEM NAME:

Military Health Information System.

SYSTEM LOCATION:

Primary location: Defense Enterprise Computing Center-Denver/WEE, 6760 E. Irvington Place Denver, CO 80279–5000.

Secondary locations: Directorate of Information Management, Building 1422, Fort Detrick, MD 21702–5000; Service Medical Treatment Facility Medical Centers and Hospitals: Uniformed Services Treatment Facilities; Defense Enterprise Computing Centers; TRICARE Management Activity, Department of Defense, 5111 Leesburg Pike, Skyline 6, Suite 306, Falls Church, VA 22041–3206; Joint Medical Information Systems Office, 5109 Leesburg Pike Suite 900, Skyline Building 6, Falls Church, VA 22041–3241, and contractors under contract to TRICARE. Program Executive Officer, Joint Medical Information Systems Office, 5109 Leesburg Pike, Suite 900, Skyline Building 6, Falls Church, Virginia 20041–3241. For a complete listing of all facility addresses write to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive or have received medical care at one or more of DoD's medical treatment facilities (MTFs), Uniformed Services Treatment Facilities (USTFs), or care provided under TRICARE programs. Uniformed services medical beneficiaries who receive or have received care at one or more dental treatment facilities or other system locations including medical aid stations, Educational and Developmental Intervention Services clinics and Service Medical Commands. Uniformed service members serving in a deployed status and those who receive or received care through the Department of Veterans Affairs (VA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal Identification Data: Selected electronic data elements extracted from the Defense Enrollment and Eligibility Reporting System (DEERS) beneficiary and enrollment records that include data regarding personal identification including demographic characteristics.

Eligibility and Enrollment Data: Selected electronic data elements extracted from DEERS regarding personal eligibility for and enrollment in various health care programs within the Department of Defense (DoD) and among DoD and other federal healthcare programs including those of the Department of Veterans Affairs (DVA), the Department of Health and Human Services (DHHS), and contracted health care provided through funding provided by one of these three Departments.

Clinical Encounter Data: Electronic data regarding beneficiaries; interaction with the MHS including health care encounters, health care screenings and education, wellness and satisfaction surveys, and cost data relative to such healthcare interactions. Electronic data regarding Military Health System beneficiaries' interactions with the DVA and DHHS healthcare delivery programs where such programs effect benefits determinations between these Department-level programs, continuity

of clinical care, or effect payment for care between Departmental programs inclusive of care provided by commercial entities under contract to these three Departments.

Electronic data regarding dental tests, pharmacy prescriptions and reports, data incorporating medical nutrition therapy and medical food management, data for young MHS beneficiaries eligible for services from the military medical departments covered by the Individuals with Disabilities Educations Act (IDEA). Data collected within the system also allows beneficiaries to requests an accounting of who was given access to their medical records prior to the date of request. It tracks disclosure types, treatment, payment and other Health Care Operations (TPO) versus non-TPO, captures key information about disclosure, process complaints, process and track request for amendments to records, generates disclosure accounting and audit reports, retains history of disclosure accounting processing.

Budgetary and Managerial Cost Accounting Data: Electronic budgetary and managerial cost accounting data associated with beneficiaries' interactions with the MHS, DVA, DHHS or contractual commercial healthcare providers.

Clinical Data: Inpatient an out patient medical records, diagnosis procedures, and pharmacy records.

Occupational and Environmental Exposure Data: Electronic data supporting exposure-based medical surveillance; reports of incidental exposures enhanced industrial hygiene risk reduction; improved quality of occupational health care and wellness programs for the DoD workforce; hearing conservation, industrial hygiene and occupational medicine programs within the MHS; and timely and efficient access of data and information to authorized system users.

Medical and Dental Resources: Electronic data used by the MHS for resource planning based on projections of actual health care needs rather than projections based on past demand.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department Regulation; 10 U.S.C., Chapter 55; Pub. L. 104–91, Health Insurance Portability and Accountability Act of 1996; DoD 6025.18–R, DoD Health Information Privacy Regulation; 10 U.S.C. 1071–1085, Medical and Dental Care; 42 U.S.C. Chapter 117, Sections 11131–11152, Reporting of Information; 10 U.S.C. 1097a and 1097b, TRICARE Prime and TRICARE Program; 10 U.S.C. 1079, Contracts for Medical Care for Spouses and Children, 10 U.S.C. 1079a, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); 10 U.S.C. 1086, Contracts for Health Benefits for Certain Members, Former Members, and Their Dependents; DoD Instruction 6015.23, Delivery of Healthcare at Military Treatment Facilities (MTFs); DoD 6010.8–R CHAMPUS; 10 U.S.C. 1095, Collection from Third Party Payers Act; and E.O. 9397 (SSN).

PURPOSE(S):

Data collected within and maintained by the Military Health Information System supports benefits determination for MHS beneficiaries between DoD, DVA, and DHHS healthcare programs, provides the ability to support continuity of care across Federal programs including use of the data in the provision of care, ensures more efficient adjudication of claims and supports healthcare policy analysis and clinical research to improve the quality and efficiency of care within the MHS.

The electronic medical records portion of the system (EMR) addresses documenting and tracking environmental health readiness data located in arsenals, depots, and bases. Data collected and maintained is used to assess the medical and dental deployability of Service members for the purposes of pre- and post-deployment exams. This assists in recording health conditions before deployment and any changes during and after deployment.

Data collected and maintained in the EMR system is used to perform disease management and the prevention of exacerbations and complications using evidence-based practice guidelines and patient employment strategies. Data collected and maintained in the EMR system is used in proactive health intervention activities for the active duty and non-active duty beneficiary population. Data collected and maintained is used to capture data on hearing loss and occupational exposures, to perform noise exposure surveillance and injury referrals to assess auditory readiness.

Data collected and maintained in the EMR system is used to establish individual longitudinal exposure records using pre-deployment exposure records. These records are used as a baseline against new exposures to facilitate post-deployment follow-up and workplace injury root-cause analysis in an effort to mitigate loss work time within the DoD.

Data collected within and maintained in the system is used for patient administration (including registration, admission, disposition and transfer); patient appointing and scheduling delivery of managed care; workload and medical services accounting; and quality assurance.

Data collected will be provided to Special Oversight Boards created by applicable DoD authorities to investigate special circumstances and conditions resulting from a deployment of DoD personnel to a theater of operations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To permit the disclosure of records to the Department of Health and Human Services (HHS) and its components for the purpose of conducting research and analytical projects, and to facilities collaborative research activities between DoD and HHS.

To the Congressional Budget Office for projecting costs and workloads associated with DoD Medical benefits.

To the Department of Veterans Affairs (DVA) for the purpose of providing medical care to former service members and retirees, to determine the eligibility for or entitlement to benefits, to coordinate cost sharing activities, and to facilitate collaborate research activities between the DoD and DVA.

To the National Research Council, National Academy of Sciences, National Institutes of Health, Armed Forces Institute of Pathology, and similar institutions for authorized health research in the interest of the Federal Government and the public. When not essential for longitudinal studies, patient identification data shall be deleted from records used for research studies. Facilities/activities releasing such records shall maintain disclosure of records released thereto.

To local and state government and agencies for compliance with local laws and regulations governing control of communicable disease, preventive medicine and safety, child abuse, and other public health and welfare programs.

To federal offices and agencies involved in the documentation and review of defense occupational and environmental exposure data, including the National Security Agency, the Army Corps of Engineers, National Guard, and the Defense Logistics Agency.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems or records

notices apply to this system, except as identified below.

Note 1: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

Note 2: Personal identity, diagnosis, prognosis or treatment information of any patient maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, except as provided in 42 U.S.C. 290dd–2, will be treated as confidential and will be disclosed only for the purposes and under the circumstances expressly authorized under 42 U.S.C. 290dd–2. The ''Blanket Routine Uses'' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on optical and magnetic media.

RETRIEVABILITY:

Records may be retrieved by individual's Social Security Number, sponsor's Social Security Number, Beneficiary ID (sponsor's ID, patient's name, patient's DOB, and family member prefix or DEERS dependent suffix), diagnosis codes, admission and discharge dates, location of care or any combination of the above.

SAFEGUARDS:

Automated records are maintained in controlled areas accessible only to authorized personnel. Entry to these areas is restricted to personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of a cipher lock. Back-up data maintained at each location is stored in a locked room. The system will comply with the DOD Information Technology Security Certification and Accreditation Process (DITSCAP) Access to HMIS records is restricted to individuals who require the data in the performance of official duties. Access is controlled through use of passwords.

RETENTION AND DISPOSAL:

Records are maintained until no longer needed for current business.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Executive Information/Decision Support Program Office, Six Skyline Place, Suite 8009, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor Social Security Number, sponsor service, beneficiary date of birth, beneficiary sex, treatment facility(ies), and fiscal year(s) of interest.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Request should contain the full names of the beneficiary and sponsor, sponsor's Social Security Number, sponsor's service, beneficiary date of birth, beneficiary sex, treatment facility(ies) that have provided care, and fiscal year(s) of interest.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual data records that are assembled to form the MHIS are submitted by the Military Departments' medical treatment facilities, commercial healthcare providers under contract to the MHS, the Defense Enrollment Eligibility Reporting System, the Uniformed Service Treatment Facility Managed Care System, the Department of Health and Human Services, the Department of Veterans Affairs, and any other source financed through the Defense Health Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–8057 Filed 4–26–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 27, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 21, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Safe and Drug Free Schools

Type of Review: New.

Title: Safe and Drug-Free Schools and Communities National Programs—Federal Activities Discretionary Grants Program.

Frequency: Annually.

Affected Public: State, ocal, or tribal gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 150.

Burden Hours: 4,200.

Abstract: This program supports the development, implementation, or expansion of school-based, mandatory random or voluntary drug-testing programs for students in one or more grades 6–12.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2698. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–8433 Filed 4–26–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at (202) 357–6938 or at *Munira.Mwalimu@ed.gov* no later than May 2, 2005. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: May 19–21, 2005.

Times:

May 19:

Committee Meetings:

Assessment Development Committee: Closed Session—1 p.m. to 2 p.m.; Open Session—2 p.m. to 4 p.m.;

Reporting and Dissemination Committee: Open Session—2 p.m. to 4 p.m.;

Executive Committee: Open Session—4:30 p.m. to 5:30 p.m.; Closed Session 5:30 p.m. to 6 p.m.

May 20:

Full Board: Open Session—8 a.m. to 12 p.m.; Closed Session 12 p.m.–1 p.m.; Open session 1 p.m.–4:15 p.m.

Committee Meetings:

Assessment Development Committee: Open Session—10 a.m. to 12 p.m.;

Committee on Standards, Design, and Methodology: Open Session—10 a.m. to 12 p.m.;

Reporting and Dissemination Committee: Open session—10 a.m. to 12 p.m.;

May 21:

Nominations Committee—Open Session 8 a.m to 8:45 a.m.

Full Board: Open Session—9 a.m. to 12 p.m.

Location: Georgia Tech Hotel and Conference Center, 800 Spring Street NW., Atlanta, GA 30380.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

The Assessment Development Committee will meet in closed session on May 19 from 1 p.m. to 2 p.m. to review the Statement of Work for development of a Writing Framework and Specifications for the 2011 National Assessment of Educational Progress (NAEP) Writing Assessment. The Governing Board anticipates releasing the Request for Proposals for this work in July 2005. This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program and will provide an advantage to potential bidders attending the meeting. The discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 19, the Reporting and Dissemination Committee will meet in open session from 2 p.m. to 4 p.m.

The Executive Committee will meet in open session on May 19 from 4:30 p.m. to 5:30 p.m. and in closed session from 5:30 p.m. to 6 p.m. The Committee will receive independent government cost estimates for contracts related to the National Assessment of Educational Progress (NAEP). This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program and will provide an advantage to potential bidders attending the

meeting. The discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 20, the full Board will meet in open session from 8:30 a.m. to 12 p.m. The Board will approve the agenda and the Chairman will introduce new Board members, who will then be administered the Oath of Office. Mark Musick, President of the Southern Regional Education Board, will welcome the Board. The Board will then hear the Executive Director's report and receive an update on the work of the National Center for Education Statistics (NCES) from the Commissioner of NCES.

From 10 a.m. to 12 p.m. on May 20, the Board's standing committees—the Assessment Development Committee; the Committee on Standards, Design, and Methodology; and the Reporting and Dissemination Committee—will meet in open session.

The full Board will meet in closed session on May 20 from 12 p.m. to 1 p.m. The Board will receive a draft report from the National Center for Education Statistics on the Long-term Trend Report in Reading and Mathematics. These data constitute a major basis for the national release of the Long-term Trend Report and cannot be released in an open meeting prior to the official release of the report. The meeting must be therefore be conducted in closed session as disclosure of data would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 20, the full Board will meet in open session from 1 p.m. to 4 p.m. At 1 p.m. Board members will discuss 12th Grade NAEP. This item will be followed by Board discussion and action on NAEP release and dissemination from 2:45 p.m. to 3:45 p.m. The Board will receive an update on the NAEP 2009 Science Framework from WestED from 3:45 p.m. to 4:15 p.m. after which the May 20 session of the Board meeting will adjourn.

On May 21, the Nominations Committee will meet in open session from 8 a.m. to 8:45 a.m. From 9 a.m. to 12 p.m. the full Board will convene in open session. At 9 a.m., the Board will hear a presentation on NAEP, NAGB, and SREB. Board actions on policies and Committee reports are scheduled to take place between 10:45 a.m. and 12 p.m., upon which the May 21, 2005 session of the Board meeting will adjourn.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. eastern standard time.

Dated: April 21, 2005.

Charles E. Smith,

Executive Director, National Assessment Governing Board.

[FR Doc. 05–8356 Filed 4–26–05; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0512; FRL–7904–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Vehicle Service Information Web Site Audit EPA ICR Number 2181.01

AGENCY: Environmental Protection Agency

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 27, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0512, to EPA online using EDOCKET (our preferred method), by e-mail to ''*a-and-r-Docket@epa.gov*'', or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105, Telephone 734–214–4288, Internet e-mail ''*pugliese.holly@epa.gov.*''

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2004–0512, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are independent aftermarket service providers.

Title: Vehicle Service Information Web Site Audit.

Abstract: EPA finalized regulations in June of 2003 (68 FR 38427; June 27, 2003) requiring auto manufacturers to

launch full text Web sites containing all required service information for 1996 and later model years. In order to assess the effectiveness of the web site provisions of the regulations, EPA believes that input from independent technicians must be of primary consideration. As part of our broader efforts to evaluate the OEM web sites, EPA is initiating a process to gather feedback directly from the technician community on their experiences with the web sites and to communicate those findings directly to the OEMs and the service industry as a whole. EPA staff will use this data in conjunction with other internal analyses to assess the effectiveness of the service information web sites that are required by the regulations. In addition, this information will be used by the Agency to determine if manufacturer guidance or changes to the regulations are needed. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Participation in the audit requires the availability of desk top or lap top computers in the maintenance facility or shop. In addition, internet access is needed in the facility in order to access the information on individual automobile manufacturer Web sites. It is anticipated that a vast majority of vehicle repair facilities have already made these capital investments for the day to day operations of their businesses and that no additional costs will be incurred by technicians who participate in the audit. In addition, the automobile manufacturers have agreed to arrange for free access to all their Web sites for participants for the 3–4 month duration of the audit. Therefore, participants will not incur any additional charges or fees as a result of participating in the audit. EPA otherwise anticipates approximately 250 technicians to and that they will spend approximately 1–2 hours per week over a 12-week time period to electronically complete and return short audit questionnaires. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 18, 2005.

Karl Simon,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 05–8439 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0102; FRL–7710–7]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review carbamate dietary exposure assessment incorporating cholinesterase recovery into CARES–compatible modules.

DATES: The meeting will be held on June 14-15, 2005, from 8:30 a.m. to approximately 5 p.m., eastern time.

Comments: For the deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION**.

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before May 9, 2005.

Special seating: Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn-National Airport, 2650 Jefferson Davis Highway, Arlington,VA 22202. The telephone number for the Holiday Inn-National Airport is (703) 684–7200.

Comments: Written comments may be submitted electronically (preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

Nominations, requests to present oral comments, and special seating: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2005–0102 in the subject line on the first page of your request.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2045; fax number: (202) 564–8382; e-mail address:*bailey.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action

under docket ID number OPP–2005–0102. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting), and the meeting agenda will be available as soon as possible, but no later than mid-to late May 2005. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0102. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0102. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID

Number OPP–2005–0102. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail*. Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0102.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2005–0102 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, June 7, 2005, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I.C., no later than noon, eastern time, May 31, 2005, to provide FIFRA SAP the time necessary to consider and review the written comments. The DFO listed under **FOR FURTHER INFORMATION CONTACT** should be notified that comments have been submitted to the docket or a courtesy copy of the comments should be provided to the DFO. There is no limit on the extent of written comments for consideration by FIFRA SAP.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: cholinesterase inhibition and recovery, pharmacokinetics/pharmocodynamics, statistics, exposure modeling. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before May 9, 2005. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at EPA (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the candidate's

financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of regulations pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

Acute dietary exposure to pesticides is currently assessed using probabilistic models (DEEM–FCID, LifeLine, CARES) that combine the entire distributions of consumption and residue data. These models perform exposure assessments using total daily 24 hour consumption amounts. It is known, however, that the acute toxic effects of certain classes of chemicals are rapidly reversible. In the case of cholinesterase inhibition by carbamates, reversibility occurs within minutes to hours. Thus, the effect of exposure to carbamates should be assessed using consumption data that refer to single eating occasions, or shorter periods of time (less than 24 hours) to reflect the toxicology profiles of these compounds. The FIFRA Scientific Advisory Panel (February 1999) concurred with the validity of using the time-dependent recovery of acetylcholinesterase to assess risks from repeated exposures to aldicarb.

Recent advances in modeling have provided the capability to conduct exposure modeling in periods less than 24 hours. Two modules, designed for compatibility with the CARES model maintained by the International Life Sciences Institute, will be presented. The first module, referred to as the Dietary Minute Module (DMM) allocates daily consumption amount for an individual by minute of a day as recorded in the CSFII database. A user determined elapsed time interval is then applied that reflects the reversibility of cholinesterase activity for the carbamate of interest based on pharmacodynamic or toxicological studies. The time entered defines discrete eating occasions for an individual's day. Each discrete eating occasion ends when a period of consumption is followed by an elapsed time interval in which no consumption of carbamate residues has occurred. A distribution of exposure for all individuals' discrete eating occasions within a day for all days and individuals in the population of interest is then created. The second module, referred to as the Cholinesterase Activity Module (CAM), is a refinement of the DMM. It incorporates the time course for reversibility of exposure to an acetylcholinesterase inhibitor, rather than assuming a fixed elapsed time period. Time dependent changes in exposure are determined from corresponding changes in acetylcholinesterase activity. A more realistic estimate of exposure can then be calculated from a summation of residual activity from all eating events.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2005.

Clifford J. Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. 05–8377 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0101; FRL–7712–9]

Pesticide Program Dialogue Committee and Consumer Pesticide Label Improvement Work Group; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, EPA gives notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC) on May 11, and 12, 2005. A draft agenda has been developed and is posted on EPA's web site. Agenda topics will include: Environmental Indicators and Results; Worker Safety Activities; Endangered Species; a report from PPDC's Registration Review Work Group and the PRIA (Pesticide Registration Improvement Act) Process Improvements Work Group; program updates on Registration, Reregistration/ Tolerance Reassessment, Fumigants, Human Studies, Mosquito Labeling, Spray Drift, Globally Harmonized System of Classification and Labeling of Chemicals (GHS), and Data Requirements for Registration (40 CFR part 158).

The PPDC Consumer Pesticide Label Improvement Work Group will meet on May 12, 2005. An agenda for this meeting has been developed and is posted on EPA's website.

DATES: The PPDC meeting will be held on Wednesday, May 11, 2005 from 9 a.m. to 5 p.m., and on Thursday, May 12, 2005, from 9 a.m. to 1 p.m.

The PPDC Consumer Pesticide Label Improvement Work Group will meet on Thursday, May 12, 2005, from 1 p.m. to 5 p.m.

ADDRESSES: Both meetings will be held at the National Press Club, 529 14th St.,

NW, Washington, DC (202) 662–7500 in the Main Ballroom on the 13th Floor. This location is one block from the METRO Center Station.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address: *fehrenbach.margie@epa.gov*.

For information on facilities or services for the handicapped or to request special assistance for the handicapped at the meetings, contact the Designated Federal Officer, Margie Fehrenbach, at (703) 308–4775 as soon as possible.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0101. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

A draft agenda has been developed and is posted on EPA's web site at *http://www.epa.gov/pesticides/ppdc/*.

II. Background

The Office of Pesticide Programs (OPP) is entrusted with responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, for a 2–year term and has been renewed every 2 years since that time. PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How Can I Request to Participate in this Meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Foods, Pesticides and pests, Public health.

Dated: April 18, 2005.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 05–8326 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0008; FRL–7712–4]

Workshop on How to Report for the 2006 Inventory Update Rule (IUR) Information Collection; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA will be holding a public workshop in Phoenix, Arizona to provide training for affected parties responsible for reporting during the 2006 Inventory Update Rule (IUR) information collection. This workshop will focus on the 2006 instructions for reporting. The instructions for reporting were revised in response to amendments to 40 CFR part 710 promulgated on January 7, 2003 (68 FR 847) (FRL–6767–4). This workshop is open to the public.

DATES: The workshop will be held on May 16, 2005 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Wyndham Phoenix Hotel, 50 East Adams Street, Phoenix, Arizona 85004; telephone number: (602) 333–0000.

Persons planning to attend the workshop are directed to the IUR website at *http://www.epa.gov/oppt/iur/*. This website contains workshop information, as well as IUR background information, draft documents, and a link to the workshop registration site. All workshop materials can be downloaded from the IUR website or the EPA electronic docket at *http://www.epa.gov/edocket/* (docket identification (ID) number: OPPT–2005–0008) in portable document format (PDF).

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Franklyn Hall, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, D.C. 20460–0001; telephone number: (202) 564–8522; e-mail address: *hall.franklyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture chemical substances currently subject to reporting under the IUR as amended on January 7, 2003 (68 FR 847) and codified as 40 CFR part 710. Persons who process chemical substances but who do not manufacture or import chemical substances are not required to comply with the requirements of 40 CFR part 710. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers and importers currently subject to IUR reporting (NAICS 325, 32411), e.g., manufacturers and importers of inorganic chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2005–0008. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.*You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

EPA is holding a workshop to train stakeholders on how to report for the 2006 Partial Updating of the TSCA Chemical Substance Inventory. The EPA is required by section 8(b) of the Toxic Substances Control Act (TSCA) to compile and update an inventory of chemical substances manufactured or imported into the United States. Every four years, manufacturers (including importers) of certain chemical substances on the Chemical Substance Inventory have been required to report data specified in the TSCA section 8(a) IUR, 40 CFR part 710. Past updates included information on the chemical's production volume, site-limited status, and plant site information. Amendments to the IUR promulgated on January 7, 2003 (68 FR 847) expanded the data reported on certain chemicals to assist EPA and others in screening potential exposures and risks resulting from manufacturing, processing, and use of TSCA chemical substances. At the same time, EPA amended the IUR regulations to increase the production volume threshold which triggers reporting requirements from 10,000 pounds per year to 25,000 pounds per year and established a new higher threshold of 300,000 pounds per year above which manufacturers must report additional information on downstream processing and use of their chemical substances. The 2003 amendments to the IUR also revoked the exemption from reporting for inorganic chemical substances, provided a partial exemption from reporting of processing and use information for chemical substances of low current interest, and continued the current exemption from reporting for polymers, microorganisms, and naturally occurring chemical substances. These changes modify requirements for information collected in calendar year 2005 and submitted in 2006 and thereafter. This workshop may be of interest to persons currently reporting under the IUR and to manufacturers of inorganic chemical substances.

The workshop will include a series of presentations by representatives of EPA on the instructions for reporting for the 2006 Partial Updating of the TSCA Chemical Substance Inventory. Subjects discussed will include reporting requirements, instructions for completing the reporting form, how to assert confidentiality claims, how to submit completed reports to EPA, and case studies illustrating different aspects of reporting. During the workshop, persons in attendance will be able to ask questions regarding the material being presented. The purpose of this meeting is to provide training to persons who must report in 2006 under the IUR.

III. How Can I Request to Participate in this Meeting?

You may register to participate in this meeting by directing your web browser to *http://www.epa.gov/oppt/iur/*. There is a workshop registration link on this website that will allow you to provide all necessary information for participation. There is no charge for attending this public meeting.

List of Subjects

Environmental protection, Chemicals, Reporting and recordkeeping requirements.

Dated: April 21, 2005.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 05–8385 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0042; FRL–7704–6]

Piperonyl Butoxide Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's human health and environmental fate and effects risk assessments and related documents for the insecticide synergist pesticide piperonyl butoxide, and opens a public comment period on these documents. EPA is developing a Reregistration Eligibility Decision (RED) for piperonyl butoxide through the full, 6–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0042, must be received on or before June 27, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cathryn O'Connell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–8041; e-mail address: *oconnell.cathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0042. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be

identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0042. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0042. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0042.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0042. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the human health and environmental fate and effects risk assessments for piperonyl butoxide. Piperonyl butoxide is an insecticide synergist. Synergists are chemicals that lack pesticidal effects of their own but enhance the pesticidal properties of other chemicals. Piperonyl butoxide is usually formulated with natural pyrethrins or synthetic pyrethroids. It has numerous and varied commercial and residential applications, is available in a broad range of formulations, and is applied by wide variety of application methods. The Agency developed these risk assessments as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for piperonyl butoxide. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as worker exposure data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to piperonyl butoxide, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR

26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA plans to review piperonyl butoxide through the full, 6–Phase public participation process. However, if as a result of comments received during the current Phase 3 public comment period the Agency finds that issues can be resolved without a second comment period in Phase 5, EPA may proceed directly to the end of the process and develop a risk management decision.

Comments should be limited to issues raised within the risk assessment(s) and associated documents. Failure to comment on any such issues as part of this opportunity will not limit a commenter's opportunity to participate in any later notice and comment processes on this matter. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for piperonyl butoxide. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–8378 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0043; FRL–7704–7]

Pyrethrins Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's human health and environmental fate and effects risk assessments and related documents for the insecticide pyrethrins, and opens a public comment period on these documents. EPA is developing a Reregistration Eligibility Decision (RED) for pyrethrins through the full, 6–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0043, must be received on or before June 27, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cathryn O'Connell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–8041; e-mail address: *oconnell.cathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0043. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA

intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0043. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0043. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0043.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0043. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the human health and environmental fate and effects risk assessments for pyrethrins. The Pyrethrins are a broad-spectrum insecticide used in four major sectors: agricultural settings, commercial/industrial/institutional/food & non-food/mosquito abatement, domestic home and garden, and pet care. Pyrethrins are a mixture of naturally occurring insecticides derived from the flowers of *Chrysanthemum cinerariaefolium* and *Chrysanthemum cineum.* The Agency developed these risk assessments as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for pyrethrins. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as worker exposure data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to pyrethrins, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA plans to review pyrethrins through the full, 6–Phase public participation process. However, if as a result of comments received during the current Phase 3 public comment period the Agency finds that issues can be resolved without a second comment period in Phase 5, EPA may proceed directly to the end of the process and develop a risk management decision.

Comments should be limited to issues raised within the risk assessment(s) and associated documents. Failure to comment on any such issues as part of this opportunity will not limit a commenter's opportunity to participate in any later notice and comment processes on this matter. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for pyrethrins. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action,''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–8379 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0337; FRL–7708–7]

Ferbam Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the pesticide ferbam, and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED), for ferbam through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0337, must be received on or before June 27, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Amaris Johnson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–9542; fax number: (703) 308–8041; e-mail address: *johnson.amaris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0337. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0337. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0337. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0337.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St.,

Arlington, VA, Attention: Docket ID number OPP–2004–0337. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

Ferbam is a fungicide that controls diseases in small fruit trees, fruits and berries, ornamentals, conifers, and tobacco. It is in the dimethyldithiocarbamate class of compounds. The human health and ecological risk assessments identified potential risks of concern for ferbam including risks to pesticide handlers and risk concerns to non-target aquatic and terrestrial animals. Dietary (food plus water) risks and worker re-entry risks are below the Agency's level of concern for human health. With this comment period, EPA is giving the public the opportunity to provide information to refine these risk estimates and/or to provide potential mitigation options for ferbam. EPA developed the risk assessments for ferbam through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical, unusually high exposure to ferbam, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For ferbam, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its low assessed risk. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for ferbam. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 21, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–8381 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0040; FRL–7704–5]

MGK 264 Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's human health and environmental fate and effects risk assessments and related documents for the insecticide synergist pesticide N-

Octyl bicycloheptene dicarboximide (MGK 264), and opens a public comment period on these documents. EPA is developing a Reregistration Eligibility Decision (RED), for MGK 264 through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0040, must be received on or before June 27, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cathryn O'Connell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number:(703) 308–8041; e-mail address: *oconnell.cathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0040. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0040. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2005–0040. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0040.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0040. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the human health and environmental fate and effects risk assessments for MGK 264. MGK 264 is an insecticide synergist. Synergists are chemicals that lack pesticidal effects of their own but enhance the pesticidal properties of other chemicals. MGK 264 is usually formulated with natural pyrethrins, piperonyl butoxide (PBO) another synergist, or synthetic pyrethroids. It has numerous commercial and residential applications, is available in a broad range of formulations, and is applied by wide variety of application methods. The Agency developed these risk assessments as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for MGK 264. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as worker exposure data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to MGK 264, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA plans to review MGK 264 through the full, 6-Phase public participation process. However, if as a result of comments received during the current Phase 3 public comment period the Agency finds that issues can be resolved without a second comment period in Phase 5, EPA may proceed directly to

the end of the process and develop a risk management decision.

Comments should be limited to issues raised within the risk assessment(s) and associated documents. Failure to comment on any such issues as part of this opportunity will not limit a commenter's opportunity to participate in any later notice and comment processes on this matter. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for MGK 264. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–8382 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0098; FRL–7709–8]

Ethyl Parathion; Notice of Receipt of Request to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by Drexel Chemical Company to voluntarily cancel their registrations of products containing the pesticide *O*, *O*-Diethyl-*O*-p-nitrophenyl thiophosphate (ethyl parathion). The request would terminate the last ethyl parathion products registered in the U.S. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless Drexel Chemical Company withdraws its request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be canceled immediately.

DATES: Comments, identified by docket ID number OPP–2005–0098, must be received on or before May 27, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5776; fax number: (703) 308–7042; e-mail address: *Parsons.Laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0098. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0098. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0098. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0098.

3. *By hand delivery or courier.* Deliver your comments to:Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0098. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background on the Receipt of Requests to Cancel Registrations

This notice announces receipt by EPA of a request, dated March 16, 2005, from Drexel Chemical Company to cancel its last four remaining ethyl parathion product registrations (identified in Table 1 below). Ethyl parathion is an organophosphate insecticide/miticide that was once registered for agricultural uses; however, no legal uses of ethyl parathion remain. Distribution of all ethyl parathion manufacturing use products was prohibited as of December 31, 2002. In addition, sale and distribution of all other end-use products containing ethyl parathion by registrants was prohibited as of December 31, 2002. The last legal date to use products containing ethyl parathion was October 31, 2003; therefore, it is appropriate to cancel the last four remaining product registrations immediately after the closing of the comment period on this notice.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from Drexel Chemical Company to cancel ethyl parathion product registrations. The affected products and the registrants making the requests are identified in Table 1 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

Drexel Chemical Company has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registrations.

TABLE 1.—DREXEL CHEMICAL COMPANY'S ETHYL PARATHION PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name
19713–322	Drexel Seis-Tres 6-3
19713–323	Drexel Parathion 8
19713–324	IDA Seis-Tres 6-3
19713–325	Drexel Parathion 4 EC

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
19713	Drexel Chemical Company, 1700 Channel Avenue, P.O. Box 13327 Memphis, TN 38113–0327

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Ethyl Parathion

Registrants who choose to withdraw a request for cancellation must submit such a withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before May 27, 2005. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because use of products containing ethyl parathion was prohibited as of October 31, 2003, there will be no existing stocks provision for the four products referenced in this notice upon their cancellation.

If the request for voluntary cancellation and/or use termination is granted, the Agency intends to publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–8185 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0019; FRL–7709–4]

Ethoprop; Products Cancellation Order

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrant and accepted by the Agency, of the following products containing the pesticide ethoprop, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a February 5, 2003 **Federal Register** Notice of Receipt of Requests to voluntarily cancel certain Pesticide Registrations. In the February 5, 2003 **Federal Register** Notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180–day comment period that would merit its further review of these requests, or unless the registrant withdrew their request within the period. The Agency did not receive any comments on the Notice. Further, the registrant did not withdraw their request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the ethoprop products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective April 27, 2005.

FOR FURTHER INFORMATION CONTACT: Jacqueline Guerry, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0024; fax number: (703) 308–8005; e-mail address: *guerry.jacqueline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0019. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces the cancellations, as requested by the registrant, of certain ethoprop products registered under section 3 of FIFRA. These registrations are listed by registration number in Table 1 of this unit.

TABLE 1.—ETHOPROP PRODUCT CANCELLATIONS

EPA Registration No.	Product Name
264–456	Ethoprop Technical
264–465	MOCAP 10% Granular Nematicide-Insecticide
264 FL–85–0001	MOCAP 10% Granular Nematicide-Insecticide
264 ME–93–0003	MOCAP 10% Granular Nematicide-Insecticide

Table 2 of this unit includes the name and address of the registrant of the products in Table 1 of this unit.

TABLE 2.—REGISTRANT OF CANCELED ETHOPROP PRODUCTS

EPA Company No.	Company Name and Address
264	Bayer Crop Science (formerly Aventis Crop Science) USA, L.P. 2 T.W. Alexander Drive P.O. Box 12014 Research Triangle Park, NC 27709

III. Summary of Public Comments Received

During the public comment period provided, EPA received no comments in response to the February 5, 2003**Federal Register** Notice announcing the Agency's receipt of the requests for the respective voluntary cancellations of ethoprop.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of ethoprop registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the ethoprop product registrations identified in Table 1 of Unit II. are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth below in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The effective date of cancellation is April 27, 2005. The Provisions for Disposition of Existing Stocks from the February 5, 2003 **Federal Register** Notice indicated that the registrant was permitted to sell or distribute existing stocks for 1 year after the date the cancellation request was received. The request to voluntarily cancel the ethoprop product registration identified in Table 1 of Unit II. was received by the Agency on October 8, 2002. Therefore, the registrant was allowed to sell and distribute existing stocks until October 8, 2003. Existing stocks already in the possession of dealers or users can be distributed, sold, or used legally until stocks are exhausted, provided that such further sale and use comply with the EPA-approved labels and labeling of the affected products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–8383 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0384; FRL–7708–6]

Phenmedipham; Reregistration Eligibility Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide phenmedipham, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide phenmedipham through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0384, must be received on or before June 27, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rosanna Louie, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0037; fax number: (703) 308–8005; e-mail address: *louie.rosanna@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0384. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register,**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-

mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0384. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0384. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0384.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0384. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a RED for the low risk pesticide, phenmedipham under section 4(g)(2)(A) of FIFRA. Phenmedipham is a broadleaf herbicide used on sugarbeets, garden (table) beets, spinach for processing and seed production. Phenmedipham is used on Swiss chard for seed production only, under FIFRA Section 24(c) Special Local Needs. There is also an IR-4 petition for the use of phenmedipham on fresh-market spinach. Phenmedipham may be formulated as an emulsifiable concentrate, and is applied as a postemergence spray. EPA has determined that the data base to support reregistration is substantially complete and that all currently registered products containing phenmedipham will be eligible for reregistration. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing phenmedipham.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the phenmedipham tolerances included in this notice.

Although the phenmedipham RED was signed on March 31, 2005, certain components of the document, which did

not affect the final regulatory decision, were undergoing final editing at that time. In addition, subsequent to signature, EPA identified several minor errors and ambiguities in the document. Therefore, for the sake of accuracy, the Agency also has included the appropriate error corrections, amendments, and clarifications. None of these additions or changes alter the conclusions documented in the March 31, 2005 phenmedipham RED. All of these changes are described in detail in an errata memorandum which is included in the public docket for phenmedipham.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like phenmedipham, which pose no risk concerns, and require no risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the phenmedipham RED.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Phenmedipham, however, poses no risks that require mitigation. The Agency therefore is issuing the phenmedipham RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for phenmedipham. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the phenmedipham RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

April 5, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–8325 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0108; FRL–7710–1]

Isophorone; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0108, must be received on or before May 27, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0108. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall

#2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0108. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2005–0108. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0108.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0108. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then

identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also, provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 13, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by The Isophorone Task Group (ITG) and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

The Isophorone Task Group (ITG)

PP 4E6894

EPA has received a pesticide petition (PP 4E6894) from The Isophorone Task Group (ITG) of the Ketones Panel of the American Chemistry Council, 1300 Wilson Blvd, Arlington, VA 22209 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by amending the existing exemption from the requirement of a tolerance for isophorone (CAS Reg. No. 78–59–1) to limit the use of isophorone to rice, spinach and sugar beets. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. In the World Heath Organization's Environmental Health Criteria 174: Isophorone (see *http://www.inchem.org/documents/ehc/ehc/ehc174.htm)*, a metabolism study of 14C-isophorone on rice and beans was summarized. In this study, the decline of isophorone concentration was determined in plants treated with pesticides containing isophorone as a carrier. 14C-Isophorone was sprayed on bean and rice plants at a rate equivalent to 7.5 kg/ha, with plant samples taken periodically and assayed for radioactivity. No attempt was made to characterize the metabolites or degradation products. In bean plants, total 14C residues declined rapidly from 60 ppm one hour after application to below 0.1 ppm on day 42. Beans harvested on day 56 had no detectable residues. In a similar manner, residues in rice plants declined from 7.3 ppm one hour after spraying, to 0.12 ppm on day 128. Analysis of the immature rice heads on days 110 and 128 showed no radioactivity. A second study of 14C-isophorone on sugar beets was also described. Plants treated at the 2-leaf stage were found to have only 10% of the 14C on day 30 compared to the initial value. Again, rapid degradation of radioactivity was observed. On day 90, radioactive residues in the plant were below 0.01 ppm. The results also suggested some uptake of radio-labeled material from the soil, likely due to uptake of small organic fragments, or 14C resulting from degradation of isophorone in the soil. The summary of these studies coupled with the known physical properties, rapid environmental degradation and volatility of isophorone support the ITG's assumption that no residues of isophorone remain in rice grain or sugar beets when they are consumed by humans.

2. *Analytical method*. ITG is requesting an exemption from the requirement of a tolerance; therefore, an analytical method is not needed.

B. Toxicological Profile

1. *Acute toxicity*. The acute toxicity of isophorone in laboratory animals is low to moderate: oral LD_{50} 1,500 milligrams/kilogram/body weight (mg/kg bwt); dermal LD_{50} 1,200 mg/kg bwt; and inhalation LC_{50} >7,000 milligrams/cubic meter (mg/m3). Isophorone is an eye irritant and a respiratory irritant but does not irritate the skin. It is not a sensitizer in animal studies.

2. *Genotoxicity*. The majority of *in vitro* genotoxicity studies revealed clearly negative results, with the exception of mouse lymphoma assays, in which both positive and negative results were observed. Positive results in these lymphoma assays observed in the absence of S9 were associated with considerable cytotoxicity. *In vivo* assays have been negative. Based on the weight-of-evidence of the negative *in vitro* results, negative *in vivo* results and

negative DNA binding data, the overall conclusion is that isophorone is not mutagenic.

3. *Reproductive and developmental toxicity*. There is no evidence indicating that isophorone interferes adversely with reproduction. No changes were observed in pregnancy rates, litter sizes, pups abnormalities or in histopathological examinations of the reproduction organs after long-term studies. In inhalation teratogenicity studies with rats and mice, the no-observed adverse effect levels (NOAELs) for maternal toxicity were 289 mg/m3 (based on <7% reductions in body weight gains). Isophorone was neither embryotoxic nor teratogenic up to the highest test concentration of 664 mg/m3].

4. *Subchronic toxicity*. In subchronic studies, oral administration of high doses of isophorone caused no significant toxic effects, and NOAELs were based on reduced body weight gains. The lowest no observed adverse effect level (NOAEL) for subchronic dietary exposure was 102.5 mg/kg/day in male CFE rats. In B6C3F1 mice, the subchronic NOAEL was 500 mg/kg bwt/day in females and 1,000 mg/kg/day in males. The subchronic NOAEL in dogs was >150 mg/kg bwt/day. After 4–week inhalation exposure in rats, nose and eye irritation and blood and liver changes were observed, and the NOAEL was <208 mg/m3.

5. *Chronic toxicity*. In an oral gavage chronic toxicity/oncogenicity study conducted by the National Toxicology Program at dose levels of 0, 250 and 500 mg/kg/day in F344 rats and B6C3F1 mice, there was some evidence of carcinogenicity of isophorone in male rats (kidney tumors, preputial gland carcinomas). The kidney tumors in male rats were attributed to an 2u-globulin-associated mechanism that is unique to male rats and is, therefore, irrelevant for human risk assessment. At the high dose level, an increased incidence of male rat preputial gland carcinomas (5/50 vs 0/50 in controls) was reported. There was equivocal evidence of carcinogenicity for male mice (liver tumors, mesenchymal tumors of the integumentary system). There was no evidence of carcinogenicity of isophorone in female rats and mice. Isophorone is classified as Category ''C'' (possible human carcinogen) with a Q* = 6.08 x 10-[4].

6. *Animal metabolism*. Upon oral and inhalation administration, isophorone is well absorbed and rapidly distributed throughout the body of rats and rabbits. While part of the absorbed dose is excreted unchanged via the urine and exhaled air, metabolites are mainly excreted as glucuronides in the urine. The tendency of isophorone to bioaccumulate is very low; within 24 hours after administration of an oral dose of isophorone, more than 93% was excreted by rats.

7. *Endocrine disruption*. No evidence of estrogenic or other endocrine effects has been noted in any of the standard developmental toxicity, subchronic or chronic toxicity/oncogenicity studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely.

C. Aggregate Exposure

1. *Dietary exposure*. A dietary risk assessment was carried out for isophorone for exposures resulting from rice, sugar beet, and spinach products using the Cumulative and Aggregate Risk Evaluation System (CARES). In this assessment, a ''worst case'' residue of 0.1 mg/kg, a very conservative level of quantitation (LOQ) from radioactive metabolism studies, was assumed for rice, spinach and sugar beets as an upper bound estimate of possible residues for a dietary analysis. In addition, it was assumed that 10% of the rice and spinach crops, and 89% of sugar beets were treated with formulations containing isophorone at the highest possible rate of 7 lbs/acre. The chronic exposure results in margins of exposure (MOEs) larger than 1,000 and cancer risks of fewer than 1 cancer in a million.

2. *Drinking water*. Dietary exposure was aggregated with the drinking water exposure derived from measured values. Since ''real world'' data were available in the literature this assessment was considered a more realistic view than modeling of the exposure and risk which would result from isophorone. The chronic assessment from aggregate exposure results in non-cancer MOEs larger than 1,000 and cancer risks of fewer than 1 cancer in a million.

D. Cumulative Effects

Currently, no methodologies are available to resolve the complex scientific issues concerning common mechanisms of toxicity and cumulative exposure and risk. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. Thus, ITG believes it is appropriate to consider only the potential risks of isophorone in its exposure assessment.

E. Safety Determination

1. *U.S. population*. The Agency's Integrated Risk Information System (see *http://www.epa.gov/iris/subst/0063.htm)* reports a chronic oral reference dose (RfD) of 0.2 mg/kg/day. This value was based on the use of the NOAEL of 150 mg/kg/day from the 90–day feeding study in dogs, with an uncertainty factor (UF) of 1,000. In addition to the standard 100X UF for interspecies and intraspecies variability, an additional 10X UF was applied to account for the use of a subchronic study. (Calculation of the RfD using the Lowest Effect Level (LEL) from a chronic rat study (time-weighted average dose of 179 mg/kg/day) with an additional 10X UF for use of a LEL produces essentially the same result.) Generally, and under FQPA, EPA has no concerns for exposures below 100% of the RfD because the RfD represents the level at or below which daily exposure over a lifetime will not pose appreciable risk to human health. Based on the RfD, the calculated drinking water level of concern (2,999 µg/L/day) is 2.75–fold above the most conservative estimate of potential human exposure resulting from consumption of ditch water following direct application of pesticide formulations containing isophorone (1,100 µg/L). In addition, based on an aggregate of the CARES dietary assessment and drinking water assessments from ground water and surface water, less than 0.1% of the RfD would be consumed. Therefore, there is reasonable certainty that no harm will result to the general U.S. population from aggregate exposure to isophorone residues.

2. *Infants and children*. In assessing the potential for additional safety of infants and children to possible residues of isophorone, data from the developmental toxicity studies in mice and rats, and the lack of effects on reproductive organs in long-term studies were considered. The developmental studies are designed to evaluate adverse effects on the developing organism resulting from exposure during prenatal development. Detailed histologic examination of reproductive organs from repeated dose studies identifies target organ effects that would indicate potential adverse effects on reproduction and the well being of offspring. Based on the existing data base for isophorone, no adverse effects on development or reproductive organs were observed. Using conservative exposure assessments, the percent RfD utilized by potential exposure to isophorone is < 0.1%, with an aggregate MOE of 937,500, well above an acceptable MOE of 100.

F. International Tolerances

There are no codex maximum residue levels established for isophorone.

[FR Doc. 05–8128 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0183; FRL–7709–9]

Thiram; Notice of Receipt of Request to Amend to Terminate Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily terminate use of certain products containing the pesticide thiram. The request would terminate thiram use in or on apples. The request would not terminate the last thiram product registered for use in the U.S. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws their request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments, identified by docket ID number OPP–2004–0183, must be received on or before May 27, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Craig Doty, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0122; fax number: (703) 308–8041; e-mail address:*doty.craig@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0183. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do

not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0183. The system is an ''anonymous access'' system, which means EPA will not know your identity, e- mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0183. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0183.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0183. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background on the Receipt of Request to Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from registrant Taminco, Inc. to amend to terminate uses of three thiram product registrations. Thiram is a non-systemic fungicide used to prevent crop damage in the field and to protect harvested crops (apples, peaches, and strawberries) from deterioration in storage or transport. It is also used as a seed protectant (e.g. small seeded vegetables, large seeded vegetables, cereal grains and other seeds, coniferous seeds, cotton seed, ornamental seeds, and soybeans) and to protect turf from fungal diseases. In addition, thiram is used as an animal repellent to protect crops from damage by rabbits, rodents, and deer. Formulations include dust, wettable powder, water dispersable granule, flowable concentrate, dry flowable, soluble concentrate, and ready-to-use liquid. Thiram is applied to seeds prior to planting both by commercial seed treaters and on-farm applicators. In a letter dated September 22, 2004, Taminco, Inc. requested EPA to amend to terminate uses of pesticide product registrations identified in this notice (Table 1). Specifically, Taminco, Inc. requested that EPA cancel all apple uses because Taminco, Inc. will not support thiram use on apples for reregistration.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to amend to terminate uses of thiram product registrations. The affected products and the registrant making the request are identified in Table 1 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment

period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

In a letter dated September 22, 2004, the thiram registrant requested that EPA waive the 180–day comment period. Therefore, EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1.—THIRAM PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company
45728-1	Thiram Technical	Taminco, Inc.
45728-21	Thiram 75 WP Fruit, Vegetable and Turf Fungicide	Taminco, Inc.
45728-24	Thiram 65	Taminco, Inc.

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANT REQUESTING VOLUNTARY AMENDMENTS

EPA Company No.	Company name and address
45728	Taminco, Inc. 1950 Lake Park Drive Smyrna, GA 30080

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Thiram

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before May 27, 2005. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–8380 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0093; FRL–7707–8]

Thymol; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemicalin or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0093, must be received on or before May 27, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrew C. Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address:*bryceland.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0093. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0093. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0093. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid

the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0093.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0093. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 5, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Vita (Europe) Limited

PP 3F6752

EPA has received a pesticide petition (PP 3F6752) from Vita (Europe) Limited, c/o Landis International, P.O. Box 5126, Valdosta, GA 31603–5126, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement for a tolerance for the biochemical pesticide thymol.

Pursuant to section 408(d)(2)(A)(i) of FFDCA, as amended, Vita (Europe) Limited has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Vita (Europe) Limited and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Thymol (5-methyl-2-isopropyl-1-phenol) (CAS No. 89–83–8), when used as an acaricide, controls varroa mites in honeybees. Efficacy is maximized if the product is used in late summer after the honey harvest (when the amount of brood present is diminishing). However, in the case of severe infestations, thymol can also be used during springtime, when temperatures are above 60°F, but not when the maximum daily temperature is above 105°F. If further significant mite fall is observed during the following winter or spring, it is recommended to use an additional secondary winter or spring treatment for varroa.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues*. Thymol is a constituent of oil of thyme, a naturally occurring mixture of compounds in the plant *Thymus vulgaris L.*, or thyme. Thymol is an active ingredient in pesticide products registered for use as animal repellents, fungicides/fungistats, medical disinfectants, tuberculocides, and virucides. Thymol also has many non-pesticidal uses, including use in perfumes, food flavorings, mouthwashes, pharmaceutical preparations, and cosmetics.

Thymol is a constituent of a mixture of organic compounds known to be rapidly degraded in the environment to elemental compounds by normal biological, physical and/or chemical processes that can be reasonably expected to exist where the pesticide is applied.

2. *Magnitude of residue at the time of harvest and method used to determine*

the residue. In samples collected from supers 30 days and 103 days after thymol was removed from the frames, thymol residues ranged from <0.03 parts per million (ppm) limit of quantitation (LOQ) to 1.5 ppm in honey and 0.75 ppm to 20.59 ppm in wax. These are the residues that are expected as the label requires that the supers be removed from the frames prior to treatment with thymol and re-installed after thymol removal (i.e., no treatment during honey flow). Samples collected from the brood frames, in which honey was being formed while thymol was present, resulted in thymol residues between <0.03 ppm and 4.61 ppm in honey and between 1.18 ppm to 682.83 ppm in wax. These samples were collected 0 to 14 days after thymol removal.

Thymol was applied to brood frames in trays in two applications at 15 day intervals (total thymol = 25 gram (g)) in all three trials. In one of the trials (3B–217) three applications at 10 day intervals (total thymol = 37.5 g) was tested as well as the 25 g rate. These studies were conducted in Europe in two different years (1997 and 1998). Samples were collected in the brood nest for analysis on the last day of treatment (0 day preharvest interval (phi)) and in the super 30 days after treatment (30 day phi) in trial 3B–214. The supers were placed on the brood nest at the end of treatment. Thymol was added in trays at the top and/or bottom of the brood frames in all three trials. In trial 3B–215, samples were collected in the brood nest on the last day of treatment (0 day phi) as well as in the super 103 days after treatment. In trial 3B–217, samples were collected in the brood nest 2 days after treatment and 14 days after treatment. In all honey samples, thymol concentration ranged from 4.61 ppm to <LOQ with a mean concentration of 1.22 ppm. Concurrent recoveries ranged from 73.9% to 116.9%. In wax samples, which were collected at the time of honey collection, residues ranged from 0.75 ppm to 683 ppm with overall concurrent recoveries ranging from 72.0 to 95.9%. All concurrent recoveries were between the acceptable range of 70% and 120%. The data were variable but there does not appear to be a significant difference between residues found in the different treatments for honey or wax samples. Thymol was extracted in hexane dichloromethane and analyzed using gas chromatography with either a (MS)-detection or (FI)-detection. The LOQ using these techniques was 0.03 mg/kg.

C. Mammalian Toxicological Profile

Thymol toxicity data reported available literature cite acute oral LD_{50} values as 980 milligrams/kilogram (mg/kg) and 880 mg/kg for the rat and guinea pig, respectively (Sax, 1984). The acute oral toxicity reported for the rat and guinea pig, respectively, corresponds to Toxicity Category III. The Material Safety Data Sheet (MSDS) for the manufacture of technical grade thymol cites human health effects as irritating when exposed by inhalation, dermal, or eye contact. The MSDS also estimates a human ingestion LD_{50} at 2 g of the synthetic thymol. Based upon an estimated thymol dermal toxicity LD_{50} of greater than 2,000 mg/kg, the dermal toxicity would be Toxicity Category III.

A summary of the submitted information on thymol toxicity allows for the statements that the acute oral LD_{50} in the rat is 980 mg/kg and in the mouse is 640 to 1,800 mg/kg. Thymol is corrosive to the rabbit eye and skin, and is not reported as a dermal sensitizer in the guinea pig. Thymol is readily absorbed from the gastrointestinal tract and is essentially excreted in the urine as a glucuronate and sulfate conjugate of the parent compound.

Thymol is not mutagenic in *Salmonella*, but gives statistically significant positive results in an Unscheduled DNA synthesis and Sister Chromatid Exchange tests, and in a cell transformation test with Syrian hamster embryonic cells. Multiple malformations are noted when thymol is injected into the air bubble or yolk sac of embryonic chickens.

Dosing of rats with thymol in the feed at 667 mg/kg body weight/day (highest dose tested) for 19 weeks did not produce any harmful effects.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Thymol is a component of many non-pesticidal consumer products currently marketed in the United States. Thymol is listed as a food additive by the Food and Drug Administration (21 CFR 172.515; synthetic flavoring substances and adjuvants). Thymol is considered Generally Recognized As Safe or GRAS (21 CFR 172.515, 182.10, and 182.20).

ii. *Drinking water*. No drinking water exposure is expected from the pesticidal use of thymol which is confined to placement in beehives. Thymol is currently registered for use on ornamental plants, shrubs and grasses so there is some potential for exposure to water. However, thymol is a constituent of a mixture of organic compounds known to be rapidly degraded in the environment to elemental compounds by normal biological, physical and/or chemical processes.

2. *Non-dietary exposure*. The potential for non-dietary exposure to thymol residues for the general population, including infants and children, is unlikely because the proposed use site is limited to beehives. Thymol is a normal constituent of the human diet, as a component of thyme and thyme oil, and as a direct food additive. Therefore, while there exists a great likelihood of prior exposure for most, if not all, individuals to thymol, any increased exposure due to the proposed use would be negligible. Thyme, which contains thymol, is a pesticide active ingredient for the control of aphids on ornamental plants. Thyme and thyme oil are considered minimum risk pesticides, and are exempted as active ingredients under FIFRA 40 CFR 152.25(f).

E. Cumulative Exposure

Thymol does not appear to produce a toxic metabolite produced by other substances.

F. Safety Determination

1. *U.S. population*. The dietary exposure to residues of thymol to the U.S. population from use of Apiguard is not likely to add significantly to current dietary exposure to thymol.

2. *Infants and children*. It is typical for language to appear on labels of honey that states ''Do not feed to infants under 1 year,'' so there likely would be no exposure of this population to residues of thymol in the honey. It is likely that older children have been exposed to thymol residues from consumption of candy, ice cream, and baked goods. Consumption of honey from hives treated with Apiguard is unlikely to significantly increase exposure to thymol. Therefore, based on the long history of use of thyme, thyme oil, and thymol in the diet with no known adverse effects, it is reasonable to conclude that no harm will result from exposure to thymol in honey from beehives treated with Apiguard.

G. Effects on the Immune and Endocrine Systems

Thymol does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that thymol has any effect on endocrine function.

H. Existing Tolerances

There are no existing tolerances for thymol in the United States.

I. International Tolerances

No Codex Maximum Residue Levels (MRL) are established for thymol. However, Switzerland has established an MRL of 0.8 mg/kg, apparently not from a safety finding, but rather arising from legislation that prohibits foreign odors or tastes in honey. According to the World Health Organization, thymol residues in food are safe to consumers at up to 50 mg/kg. According to European Union regulation Nr. 2377/90, thymol is in group II of the non-toxic veterinary drugs which do not require a MRL.

[FR Doc. 05–8127 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7904–7]

Draft of the Causal Analysis/Diagnosis Decision Information System (CADDIS) E-Docket No. ORD–2005–0001

AGENCY: Environmental Protection Agency.

ACTION: Notice of external review draft for public review and comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Versar Inc., an EPA contractor for external scientific peer review, will convene a panel of experts and organize and conduct an external peer-review workshop to review the external review draft Web site titled ''Causal Analysis/Diagnosis Decision Information System.'' The EPA is also announcing a 30-day public review and comment period for the draft Web site. The CADDIS Web site was developed and prepared by EPA's National Center for Environmental Assessment (NCEA), in the Office of Research and Development (ORD). NCEA will consider public comment submissions in revising the Web site.

DATES: The peer-review panel workshop will begin on June 6, 2005, at 8:30 a.m. and end at 5, eastern daylight time. The 30-day public comment period begins April 27, 2005, and ends May 27, 2005. Technical comments should be in writing and must be submitted electronically or postmarked by May 27, 2005.

ADDRESSES: The peer-review workshop will be held in the 7th floor conference room, at 633 3rd St., NW., Washington DC. To attend the workshop, register by June 1, 2005, by calling Crystal Edwards of NCEA, at 202–564–1140, or send a facsimile to 202–564–2018. You may also register via e-mail at *edwards.crystal@epa.gov*. The draft CADDIS Web site can be accessed via the Internet at *http://www.epa.gov/caddis*. Comments may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact Crystal Edwards, USEPA (8623–N), 1200 Pennsylvania Ave., NW., Washington DC 20460; telephone: 202–564–1140; facsimile: 202–564–2018. For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*. For technical information, contact Susan Norton, Ph.D., NCEA, via facsimile: 202–564–2018, or e-mail: *norton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Summary of CADDIS Project

Over a thousand water bodies in the United States are listed by states as biologically impaired. For many of these sites, the cause of impairment is reported as ''unknown.'' Before appropriate management actions can be formulated for impaired water bodies, the causes of biological impairment (*e.g.*, excess fine sediments, nutrients, or toxics) need to be identified. Effective causal analyses call for knowledge of the mechanisms, symptoms, and stressor-response relationships for various stressors, as well as the ability to use that knowledge to draw appropriate, defensible conclusions. To aid in these causal analyses, NCEA has developed the first version of CADDIS. CADDIS is a Web-based decision support system that will help regional, state, and tribal scientists find, access, organize, and share information useful for causal evaluations in aquatic systems. It is based on EPA's Stressor Identification process, which is an EPA-recommended method for identifying causes of impairments in aquatic environments. Current features of CADDIS include a step-by-step guide to conducting causal analysis, downloadable worksheets and examples, a library of conceptual models, and links to useful information sources.

How To Submit Comments to EPA's E-Docket

EPA has established an official public docket for information pertaining to the revision of the CADDIS website, Docket ID No. ORD–2005–0001. The official public docket is the collection of materials, excluding Confidential Business Information (CBI) or other information whose disclosure is restricted by statute, that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

An electronic version of the official public docket is available through EPA's electronic public docket and comment system, E-Docket. You may use E-Docket at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to view those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in E-Docket. Information claimed as CBI and other information with disclosure restricted by statute, which is not included in the official public docket, also will not be available for public viewing in E-Docket. Copyrighted material will not be placed in E-Docket, but will be referenced there and available as printed material in the official public docket.

For people submitting public comments, please note that EPA's policy makes that information available for public viewing as received and at no charge at the EPA Docket Center or in E-Docket. This policy applies to information submitted electronically or in paper form, except where restricted by copyright, CBI, or statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment placed in EPA's electronic public docket; the entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to E-Docket. Physical objects will be photographed, where practical, and the photograph will be placed in E-Docket along with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, include the appropriate docket identification number with your submission. Please adhere to the specified submitting period; public comments received or submitted past the closing date will be marked ''late'' and may only be considered if time permits.

If you submit public comments electronically, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of our comment. Also include these contact details on the outside of any submitted disk or CD–ROM, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the person submitting the public comments and allows EPA to contact you in case the Agency cannot read your submission due to technical difficulties, or needs further information on the substance of your comment. EPA will not edit your comment, and any identifying or contact information provided in the body of the comment will be included as part of the comment placed in the official public docket and made available in E-Docket. If EPA cannot read what you submit due to technical difficulties and cannot contact you for clarification, it may delay or prohibit EPA's consideration of your comments.

Electronic submission of comments via E-Docket is the preferred method for receiving comments. To access EPA's electronic public docket from the EPA Internet home page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and key in Docket ID No. ORD–2005–0001. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact details unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov*, Attention Docket ID No. ORD–2005–0001. In contrast to EPA's electronic public docket, EPA's e-mail system is *not* an ''anonymous access'' system. If you send an e-mail directly to the docket without going through EPA's E-Docket, EPA's e-mail system automatically captures your e-mail address, and it becomes part of the information in the official public docket and is made available in E-Docket.

You may submit comments on a disk or CD–ROM mailed to the OEI Docket mailing address. Files will be accepted in WordPerfect, Word, or PDF file format. Avoid the use of special characters and any form of encryption.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Dated: April 20, 2005.

George W. Alapas,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 05–8442 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

March 31, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 27, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77, 47 CFR Sections 64.703(a), 64.709, and 64.710.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 630 respondents; 54,375,330 responses.

Estimated Time per Response: 30 seconds to 50 hours.

Frequency of Response: On occasion and annual reporting requirements, Third party disclosure.

Total Annual Burden: 477,185 hours.

Total Annual Cost: $216,150.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Pursuant to 48 CFR 64.703(a), Operator Service Providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. 47 CFR 64.709 codifies the requirements for OSP's to file informational tariffs with the Commission. 47 CFR 64.710 requires providers of interstate operator services to inmates at correctional institutions to identify themselves, audibly and distinctly, to the party to be billed, among other things.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–8206 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 02–53, DA 05–1045]

Presubscribed Interexchange Carrier Charges

AGENCY: Federal Communications Commission.

ACTION: Notice; waiver of compliance date.

SUMMARY: This document grants informal requests for waiver of the deadline for compliance with the Commission's revised presubscribed interexchange carrier (PIC) change charge policies. PIC change charges are federally-tariffed charges imposed by incumbent local exchange carriers on end-user subscribers when these subscribers change their long distance carriers. The order extends by six months the date by which incumbent local exchange carriers must file tariff revisions to comply with the revised PIC change charge requirements.

DATES: *Effective Date:* April 8, 2005.

Compliance Date: Incumbent local exchange carriers shall filed revised rates in compliance with the PIC Change Charge Order no later than October 17, 2005. These rates shall be effective on 15 days' notice.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, *jennifer.mckee@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the order in CC Docket No. 02–53 released on April 11, 2005. The full text of this document is available on the Commission's Electronic Comment Filing System Web site and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

On February 10, 2005, the Commission adopted a report and order revising its requirements regarding PIC change charges. *Presubscribed Interexchange Carrier Charges,* 70 FR 12601, March 15, 2005. PIC change charges are federally tariffed charges imposed by local exchange carriers (LECs) on end user subscribers when these subscribers change their presubscribed interexchange carriers (IXCs). Based on the record in the proceeding, the Commission required incumbent LECs to adopt separate PIC change charges for changes that are processed electronically and manually. The Commission adopted a safe harbor of $1.25 for electronically processed PIC changes, and a safe harbor of $5.50 for manually processed PIC changes. The Commission also required that, when a customer changes its PIC in conjunction with changing its intraLATA primary interexchange carrier (LPIC), incumbent LECs should assess half of the applicable federally-tariffed PIC change charge. Incumbent LECs were required to revise their Federal tariffs to reflect these changes within 30 days of publication of the order in the **Federal Register**, with the new rates to be effective on 15 days' notice. The *PIC Change Charge Order* was published in the **Federal Register** on March 15, 2005; therefore, incumbent LECs were required to file their tariff revisions by April 14, 2005.

Several individual incumbent LECs and trade groups representing incumbent LECs have informally requested that the Commission extend the effective date of the requirements in the *PIC Change Charge Order*. These entities assert that they will not be able by April 14 to make the changes necessary within their systems to assess separate charges for manually and electronically processed PIC changes, or to assess the 50 percent charge when PICs are changed in conjunction with LPICs.

The incumbent LECs have shown good cause for an extension of the tariff revision deadline. Several incumbent LECs have provided extensive explanations of the changes to their billing and operating systems necessary for implementation of the revised PIC change charges. We therefore find that a limited waiver of the deadline for complying with the *PIC Change Charge Order* is warranted. We do not, however, believe that the public interest is served by delaying the implementation of the PIC change charge requirements for the ten- to twelve-month period requested by some parties. Instead, we extend by six months the effective date for filing revised tariffs implementing the PIC change charge requirements. Based on information provided by several incumbent LECs, we believe that six months is a sufficient amount of time for incumbent LECs to make the system changes necessary to implement the revised PIC change charge requirements. This limited extension serves the public interest by allowing incumbent LECs to implement revised PIC change charges at one time, rather than in a piecemeal fashion, which could create customer confusion.

Accordingly, *it is ordered*, pursuant to section 1–4, 201, 203, 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 203, 205, and 403, §§ 1.3 and 1.41 of the Commission's rules, 47 CFR 1.3 and 1.41, and authority delegated under §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91 and 0.291, that the informal request of the incumbent LECs for a limited waiver of the date for filing tariff revisions related to the *PIC Change Charge Order is granted,* to the extent discussed above. Incumbent LECs *shall file revised rates,* to include one rate for PIC changes that are processed electronically and a separate rate for PIC changes that are processed manually, and rates equal to 50 percent of the full PIC change charge rate when a customer requests a PIC change in conjunction with an LPIC change, *no later than October* 17, 2005. These rates *shall be effective* on fifteen (15) days' notice.

Federal Communications Commission.

Lisa S. Gelb,

Deputy Chief, Wireline Competition Bureau.

[FR Doc. 05–8342 Filed 4–26–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[WC Docket Number 03–109; FCC 05–77]

Smith Bagley, Inc., Petition for Waiver of Section 54.400(e) of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants the petition of Smith Bagley, Inc. (SBI) seeking a waiver of section 54.400(e) of the Commission's Lifeline and Link-Up eligibility rules to enable eligible residents of the Eastern Navajo Agency in the state of New Mexico to receive enhanced Lifeline and Link-Up support.

FOR FURTHER INFORMATION CONTACT: Mark Seifert, Assistant Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 03–109 released on March 30, 2005. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this Order, we grant the petition of Smith Bagley, Inc. (SBI) seeking a waiver of § 54.400(e) of the Commission's Lifeline and Link-Up eligibility rules to enable eligible residents of the Eastern Navajo Agency in the state of New Mexico to receive enhanced Lifeline and Link-Up support. We find that this waiver is in the public interest and warranted by the unique and compelling circumstances of low-income consumers residing in the Eastern Navajo Agency.

II. Discussion

2. We grant SBI's request for waiver of § 54.400(e) of the Commission's rules and find that SBI has demonstrated good cause to justify the waiver by demonstrating that special circumstances exist and because granting such a waiver, in this instance, is in the public interest.

3. Generally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.

4. We find that SBI has identified special circumstances in the Eastern Navajo Agency that warrant a waiver of § 54.400(e) of the Commission's rules. In the *Twelfth Report and Order,* 65 FR 47941, August 4, 2000, the Commission identified a number of factors that are primary impediments to subscribership on Tribal lands, including the lack of access to and/or affordability of telecommunications services, the cost of basic service, the cost of intrastate toll service, inadequate telecommunications infrastructure and the cost of line extensions, and the lack of competitive service providers offering alternative technologies. To address these impediments, the Commission adopted measures specifically targeted to increase subscribership and infrastructure development on Tribal lands, where unaffordable service and low subscribership are most prevalent. Our review of the record reveals that the Eastern Navajo Agency has the same impediments to subscribership and infrastructure development as those existing on Tribal lands.

5. The Eastern Navajo Agency encompasses lands that do not fall within the Commission definition of a ''reservation'' for purposes of enhanced Lifeline and Link-Up support. Ninety-two percent of the 37,404 persons living within its borders are Navajo Nation tribal members. Recent data published by the Census Bureau indicate that telephone penetration rates and per capita incomes in the Eastern Navajo Agency are far below the average existing throughout America. The telephone subscribership penetration rates for the United States are approximately 94% and per capita income is $21,587. Telephone penetration rates and per capita income in the Eastern Navajo Agency are far below the average existing on Tribal lands nationwide. Census data show that the average telephone penetration rate on Tribal lands is approximately 68% and per capita income is $12,452. By comparison, telephone penetration in the Eastern Navajo Agency is approximately 33% and per capita income is $6,979. Census data also show that nearly 45% of the 37,404 Eastern Navajo Agency residents subsist at or below the federal poverty level, compared to 23.5% of American Indian residents living on Tribal lands. In addition, data show that unemployment in the Eastern Navajo Agency stands at 25%, compared to 13.6% of American Indian residents on Tribal lands. Finally, approximately 52% of households rely on wood for heat and 46% of households lack plumbing. It is evident, therefore, that depressed economic conditions exist in the Eastern Navajo Agency. The Commission has previously determined that this is one of the primary causes of low subscribership levels.

6. Other factors identified by the Commission as impediments to subscribership also exist in the Eastern Navajo Agency. In particular, the cost of basic telephone service, $13.50 per month, and the cost of intrastate toll service, $0.16 per minute, is high relative to the incomes of many families in the Eastern Navajo Agency. Moreover, sparse population and distances between existing plant and requesting customers in this area make extending wireline telephone facilities challenging, if not infeasible. In addition, depressed economic conditions of potential subscribers may not justify construction of telecommunications facilities because of the consumers' inability to pay for service. In fact, there are many areas within the Eastern Navajo Agency where no telephone service is available. SBI submits that it has been unable to identify another area in the United States of similar geographic size or population that suffers from these types of conditions.

7. Based on the statistics discussed above and our review of the record, we conclude that specific action is needed to address the impediments to subscribership and infrastructure development in the Eastern Navajo Agency to ensure affordable access to telecommunications services for residents. Although the enhanced Lifeline and Link-Up program is limited to low-income consumers living on reservations, most of the factors that the Commission found relevant in establishing enhanced Lifeline and Link-Up support exist for the Eastern Navajo Agency. We therefore conclude that it is appropriate to waive § 54.400(e) of the Commission's rules and permit ETCs serving the Eastern Navajo Agency to offer Tier 4 Lifeline and Link-Up benefits to qualified residents.

8. We find that granting SBI's Waiver Petition will serve the public interest by allowing SBI to provide service at rates that will likely increase the number of subscribers in the Eastern Navajo Agency who can afford basic telephone service. As illustrated in SBI's Waiver Petition, household telephone penetration in the other four Navajo Nation Agencies significantly increased as a result of ETCs having the ability to offer and advertise Tier 4 benefits. In fact, in three years, SBI added more than 27,000 new Tier 4-eligible subscribers in four other Navajo Nation Agencies. Based on the performance of the other four Navajo Agencies, SBI estimates that 20,000 households in the Eastern Navajo Agency will be able to initiate telephone service with the availability of Tier 4 support. This record persuades us that making enhanced Lifeline and Link-Up support available will eliminate or diminish the effect of unaffordability for individuals in the Eastern Navajo Agency who have never had telephone service and for individuals who cannot afford to maintain telephone service. Furthermore, making access to telecommunications services more affordable also serves the public interest because it enables these low-income consumers to have easier access to emergency, medical, government and other public services that they may need.

9. The availability of enhanced federal support in the Eastern Navajo Agency will also make this area more attractive for carrier investment and deployment of telecommunications infrastructure. As the Commission stated in the *Twelfth Report and Order,* increasing the total number of individuals who are connected to the network within a tribal community enhances the value of the network in that community and results in greater incentives for ETCs to serve those areas. Specifically, as the number of potential subscribers grows, carriers may achieve greater economies of scale and scope when deploying facilities and providing service to those areas. In this way, granting this waiver serves the public interest because doing so furthers the Commission's goal of increasing the deployment of telecommunications facilities in unserved and underserved

regions of the Nation, especially among Native American populations. We emphasize that the action we take here does not affect state sovereignty or impinge upon a state's ability to establish universal service programs aimed at increasing telephone subscribership within its borders.

10. Verizon opposes a waiver of § 54.400(e) until such time as the Commission determines how the term ''near reservation'' should be defined. As noted above, however, Smith Bagley no longer requests the Commission to designate the Eastern Navajo Agency as ''near reservation'' land. Because we do not grant this waiver on the basis of defining ''near reservation,'' we reject Verizon's argument.

11. Further, we are not persuaded by Verizon's argument that SBI's Waiver Petition should be denied because states are in a better position to address pockets of low subscribership in non-reservation areas within their respective state. We agree that, in most instances, it is more appropriate for states to implement Lifeline and Link-Up programs designed for the specific needs of their state. Nothing in this order is intended to prevent state action in this regard. Indeed, the state of New Mexico is free to adopt measures to eradicate pockets of low subscribership within its borders. We emphasize that, at the present time, 67% of occupied housing units in the Eastern Navajo Agency do not have telephone service. As we stated in the *Twelfth Report and Order,* ''the unavailability or unaffordability of telecommunications service on Tribal lands is at odds with our statutory goal of ensuring access to such services to ''[c]onsumers in all regions of the Nation, including low-income consumers.'' Although the Eastern Navajo Agency is not entirely comprised of Tribal lands under the Commission's definition, the area is almost exclusively populated by Native Americans that suffer from the same conditions present on other federally-recognized Tribal lands. The availability of Tier 4 support program will provide immediate and vital benefits to low-income consumers in the Eastern Navajo Agency, consistent with the Commission's goal of enhancing telecommunications access among consumers on Tribal lands and its responsibility to ensure a standard of livability for members of Indian tribes.

III. Ordering Clause

12. Pursuant to authority contained in sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 254, and the authority under § 1.3 of the Commission's rules, 47 CFR 1.3, the Waiver Petition filed by Smith Bagley, Inc., on November 15, 2004, is granted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–8339 Filed 4–26–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 05–62; FCC 05–31]

Suspension of the Acceptance of Applications for new 900 MHz Licenses Allotted to Business and Industrial Land Transportation Pool Licensees

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission affirmed the Wireless Telecommunications Bureau's (Bureau) decision to suspend the acceptance of applications for new 900 MHz business and industrial land transportation (B/ILT) licenses. The Commission takes this action to facilitate the auction of 900 MHz B/ILT white space.

DATES: The application suspension became effective on September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Connelly, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order (MO&O),* FCC 05–31, in WT Docket No. 05–62, adopted February 10, 2005, and released February 16, 2005. The full text of this document is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Best Copy & Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 800–378–3160, facsimile 202–488–5563, or via e-mail at *www.fcc@bcpiweb.com.*

1. In this document, the Commission affirms the Bureau's decision to suspend the acceptance of applications for new 900 MHz business and industrial land transportation (B/ILT) licenses in a *Public Notice,* 19 FCC Rcd 18,277 (2004), until further notice. The Bureau noted that an exceptionally large number of applications for 900 MHz authorizations had been filed subsequent to the release of the *800 MHz Rebanding Order*, 69 FR 67823, November 22, 2004. The Bureau noted its concern that such additional filings might compromise the ability to accommodate displaced systems while the 800 MHz band is in the process of being reconfigured to abate unacceptable interference to Public Safety, Critical Infrastructure, and other ''high site'' 800 MHz systems. The Bureau provided that applications for the modification of existing facilities, assignment of licenses, or transfer of control of a licensee would continue to be accepted, subject to applicable rules regarding eligibility, loading, and other requirements. In addition, applicants were advised that pursuant to 47 CFR 1.925, they may have recourse via the Commission's waiver provisions to request an exception to the freeze.

2. Because of the fundamental changes the Commission is proposing in the service areas and channel blocks for future licensees in the 900 MHz B/ILT white space spectrum, the Commission finds it appropriate and necessary to continue to suspend new 900 MHz applications in the B/ILT category Pools. Being cognizant of the needs of existing licensees, and the fact that incumbents may continue to file modification applications, the Commission will consider requests for waiver of the application freeze for new authorizations (*e.g.*, a licensee with a legitimate business need to expand coverage or add channels), thereby striking an appropriate balance of the need to keep the spectrum as unencumbered as possible with the needs of current licensees with business plans that need to be effectuated. Further, the Commission stresses that the waiver applicant bears the burden of demonstrating compliance with waiver standards, and notes that all 900 MHz band applications for new licenses filed prior to the freeze and are still pending, and will be processed in the normal course.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–8343 Filed 4–26–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–05–62–A (Auction No. 62); DA 05–1076]

Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures for Auction No. 62

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain FM broadcast construction permits scheduled to commence on November 1, 2005 (Auction No. 62). This document also seeks comment on reserve prices or minimum opening bids and other procedures for Auction No. 62.

DATES: Comments are due on or before April 29, 2005, and reply comments are due on or before May 6, 2005.

ADDRESSES: Parties who file by paper must file an original and four copies of each filing. U.S. Postal Service first class, express and priority mail must be addressed to Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. Comments and reply comments must also be sent by electronic mail to the following address: *auction62@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Howard Davenport at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2888. For service rule questions, contact the Audio Services Division, Media Bureau, as follows: Lisa Scanlan or Tom Nessinger at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released April 14, 2005, *Auction No. 62 Comment Public Notice*. The complete text of the *Auction No. 62 Comment Public Notice*, including attachments and any related Commission documents is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 62 Comment Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 05–1076 for the Auction No. 62 Comment PN). The *Auction No. 62 Comment Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/62/*.

I. General Information

1. By the *Auction No. 62 Comment Public Notice*, the Wireless Telecommunications Bureau (WTB) and the Media Bureau (MB) (collectively referred to as the Bureaus) announce the auction of certain FM broadcast construction permits (Auction No. 62) to commence on November 1, 2005. As discussed in greater detail herein, the Bureaus propose that Auction No. 62 be composed of 173 construction permits in the FM broadcast service as listed in Attachment A of the *Auction No. 62 Comment Public Notice*. The construction permits to be auctioned include 143 new FM allotments, and 30 unsold FM construction permits from Auction No. 37.

2. Attachment A of the *Auction No. 62 Comment Public Notice* lists vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures, designated for use in the indicated community. Pursuant to the policies established in the *Broadcast First Report and Order*, 63 FR 48615, September 11, 1998, applicants may apply for any vacant FM allotment, as specified in Attachment A of the *Auction No. 62 Comment Public Notice*. Applicants specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for the FM allotment will be awarded by competitive bidding procedures. The reference coordinates for each vacant FM allotment are also listed in Attachment A of the *Auction No. 62 Comment Public Notice*.

3. Auction No. 62 will use the FCC's Integrated Spectrum Auction System (ISAS or FCC Auction System), an extensive redesign of the previous auction application and bidding systems. The redesign includes FCC Form 175 application enhancements such as discrete data elements in place of free-form exhibits and improved data accuracy through automated checking of FCC Form 175 applications. Enhancements have also been made to the FCC Form 175 application search function. The auction bidding system has also been updated for easier navigation, customizable results, and improved functionality. More information about ISAS is available via the ''About ISAS'' link on the Auctions Web page at *http://wireless.fcc.gov/auctions/*.

4. Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of Section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureaus, under existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. We therefore seek comment on the following issues relating to Auction No. 62.

II. Auction Structure

A. Simultaneous Multiple-Round Auction Design

5. The Bureaus propose to award all construction permits included in Auction No. 62 in a simultaneous multiple-round auction. This methodology offers every construction permit for bid at the same time with successive bidding rounds in which bidders may place bids. That is, bidding will remain open on all construction permits until bidding stops on every construction permit. We seek comment on this proposal.

B. Upfront Payments and Bidding Eligibility

6. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each FM construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar spectrum. As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on FM construction permits. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind, we propose the schedule of upfront payments for each construction permit as set forth in Attachment A of the *Auction No. 62*

Comment Public Notice. We seek comment on this proposal.

7. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's initial bidding eligibility. Each FM construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 62 Comment Public Notice*, on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. In order to bid on a construction permit, qualified bidders must have an eligibility level that meets the number of bidding units assigned to that construction permit. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. We seek comment on this proposal.

C. Activity Rules

8. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity will be the sum of the bidding units associated with the construction permits upon which it places a bid during the current round and the bidding units associated with the construction permits upon which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly eliminating the bidder from further bidding in the auction.

9. The Bureaus propose to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. We propose that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, we further propose that the Bureaus retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureaus will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

10. For Auction No. 62, the Bureaus propose the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on construction permits representing at least 75 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by four-thirds (4/3).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

11. The Bureaus seek comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

12. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

13. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (i) the bidder has no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement.

Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

14. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the ''reduce eligibility'' function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

15. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the ''apply waiver'' function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open. The submission of a proactive waiver cannot occur after a bid has been submitted in a round and will preclude a bidder from placing any bids later in that round. *Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be*

unsubmitted, even if the round has not yet closed.

16. The Bureaus propose that each bidder in Auction No. 62 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

17. For Auction No. 62, we propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

III. Bidding Procedures

A. Round Structure

18. The Commission will conduct Auction No. 62 over the Internet. Alternatively, telephonic bidding will also be available. The toll-free telephone number for telephonic bidding will be provided to bidders.

19. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. The simultaneous multiple-round format will consist of sequential bidding rounds, each followed by the release of round results. Details on viewing round results, including the location and format of downloadable round results files will be included in the same public notice.

20. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

21. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses or construction permits are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of minimum opening bid amounts and/or reserve price prior to the start of each auction of broadcast construction permits.

22. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid amount, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

23. In light of the requirements in section 309(j), the Bureaus propose to establish minimum opening bid amounts for Auction No. 62. The Bureaus believe a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool.

24. For Auction No. 62, the proposed minimum opening bids were determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data and recent broadcast transactions. The specific minimum opening bid for each construction permit available in Auction No. 62 is set forth in Attachment A of the *Auction No. 62 Comment Public Notice.* We seek comment on this proposal.

25. If commenters believe that these minimum opening bid amounts will result in substantial numbers of unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts, we particularly seek comment on such factors as the potential value of the spectrum being auctioned including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility and other relevant factors that could reasonably have an impact on valuation of the broadcast spectrum. We also seek comment on whether, consistent with section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

C. Minimum Acceptable Bid Amounts and Bid Increments

26. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.

27. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus an additional amount. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage—*e.g.*, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded. We will round the result using our standard rounding procedures.

28. The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid amount and additional amounts calculated using the minimum acceptable bid amount and the bid increment percentage. We will round the results using our standard rounding procedures. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.*, if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.10), rounded, or (minimum acceptable bid amount) * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable

bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded; etc. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

29. In the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

30. For Auction No. 62, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent and a bid increment percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit, and additional acceptable bid amounts for a construction permit will be approximately 10–80 percent greater (in intervals of 10 percent) than the minimum acceptable bid amount for the construction permit.

31. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if it determines that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System during the auction. We seek comment on these proposals.

D. Provisionally Winning Bids

32. At the end of a bidding round, a provisionally winning bid amount for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids), we propose to use a random number generator to select a single provisionally winning bid from among the tied bids. If the auction were to end with no higher bids being placed for that construction permit, the winning bidder would be the one that placed the selected provisionally winning bid. However, the remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

33. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids confer credit for activity.

E. Information Regarding Bid Withdrawal and Bid Removal

34. For Auction No. 62, the Bureaus propose the following bid removal and bid withdrawal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

35. A bidder may withdraw its provisionally winning bids using the ''withdraw bids'' function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. We seek comment on these bid removal and bid withdrawal procedures.

36. In the *Part 1 Third Report and Order*, 63 FR 2315, January 15, 1998, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and construction permits and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureaus, therefore, have discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureaus should assertively exercise their discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular construction permit if the Bureaus find that a bidder is abusing the Commission's bid withdrawal procedures.

37. Applying this reasoning, we propose to limit each bidder in Auction No. 62 to withdrawing provisionally winning bids in no more than one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of provisionally winning bids that may be withdrawn in the round in which withdrawals are used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

F. Stopping Rule

38. The Bureaus have discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 62, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits.

39. Bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or places any withdrawals. Thus, unless circumstances dictate otherwise, bidding will remain open on all construction permits until bidding stops on every construction permit.

40. However, the Bureaus propose to retain the discretion to exercise any of the following options during Auction No. 62:

i. Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, places a withdrawal or submits any new bids on any construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. The Bureaus further seek comment on whether this modified stopping rule should be used at any time or only in stage two of the auction.

ii. Keep the auction open even if no bidder submits any new bids, applies a waiver or places any withdrawals. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding

eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

41. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the minimum acceptable bid percentage for the limited number of construction permits on which there is still a high level of bidding activity. We seek comment on these proposals.

IV. Due Diligence

42. Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture. In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific *Report and Order* amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid. *Reports and Orders* adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements. Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given FM construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. Applicants are strongly encouraged to inspect any prospective transmitter sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the Commission's rules regarding the National Environmental Policy Act.

43. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 62 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 62 are strongly encouraged to continue such research during the auction.

V. Conclusion

44. Comments are due on or before April 29, 2005, and reply comments are due on or before May 6, 2005. All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission. Parties who file by paper must file an original and four copies of each filing. U.S. Postal Service first-class, Express, and Priority mail should be addressed to Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Bureaus also require that all comments and reply comments be filed electronically to the following address: *auction62@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to ''Auction No. 62 Comments'' and the name of the commenting party. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection between 8 a.m. and 4:30 p.m. Monday through Thursday or 8 a.m. to 11:30 a.m. on Friday in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and will also be posted on the Web page for Auction No. 62 at *http://wireless.fcc.gov/auctions/62*.

45. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Gary Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 05–8521 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–619]

Basic Reconfiguration Schedule Put Forth in the Transition Administrator's 800 MHz Regional Prioritization Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In July 2004, the Federal Communications Commission (FCC) adopted a *Report and Order,* in the 800 MHz Public Safety Proceeding establishing rules that reconfigure the 800 MHz band to eliminate interference to public safety and other 800 MHz land mobile communication systems. As specified in the Commission's *Report and Order,* the band reconfiguration process is being overseen by a Transition Administrator (TA) whose duties include providing the Commission with a plan detailing when band reconfiguration will commence in each of the fifty-five 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) regions. On January 31, 2005, the TA filed the plan (Regional Prioritization Plan or RPP), containing a general schedule for implementing 800 MHz band reconfiguration.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, *Roberto.Mussenden@FCC.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released on March 11, 2005.

1. The TA plan assigns each of the fifty-five NPSPAC regions to one of four basic ''prioritization waves'' with staggered approximate starting dates. Under the RPP, the first wave commences on June 27, 2005, (Wave 1), the second wave on October 3, 2005 (Wave 2), the third wave on January 3, 2006 (Wave 3) and the fourth wave on

April 3, 2006 (Wave 4). The reconfiguration process for each wave begins with negotiations between affected licensees and Nextel for payment of relocation costs. Licensees may negotiate with Nextel directly or use the TA as an intermediary. There are separate six-month negotiation periods for non-NPSPAC and NPSPAC licensees. Consistent with the Commission's *Report and Order,* 69 FR 67823, November 22, 2004, released on August 6, 2004, the first three months of the negotiation period are voluntary, the last three months mandatory. Band reconfiguration will be completed within thirty-six months of the date on which official band reconfiguration commences, as required by the Commission's *Report and Order*.

2. By this notice, and as specified in the *Report and Order,* we approve the RPP's basic 800 MHz band reconfiguration schedule, *i.e.*, the grouping of the NPSPAC regions into four waves and starting the reconfiguration process in each wave on the dates recommended by the TA. We believe this schedule comports with the population and interference-history considerations identified in the *Report and Order.* We also concur with the Transition Administrator's recommendation for separate negotiation periods for NPSPAC and non-NPSPAC licensees in each wave.

3. The Commission will release public notices establishing the start date for commencement of negotiations in each wave. These public notices will be released thirty days prior to the start dates. However, licensees may initiate negotiations before the start date, and we encourage them to do so, especially in the case of complex systems such as those that span more than one NPSPAC region.

4. The Reconfiguration Plan filed by the TA is available on the Commission's 800 MHz band reconfiguration Web page at *http://www.800MHz.gov.* A summary of the schedule is listed in the attachment to this notice. Questions concerning the RPP, and other Transition Administrator matters, including whether your 800 MHz system must be relocated, should be directed to Brett Haan, BearingPoint, 1676 International Drive, McLean, VA 22102, *Brett.Haan@800ta.org.*

Federal Communications Commission.

Ramona Melson,

Chief of Staff, Public Safety and Critical Infrastructure Division, WTB.

ATTACHMENT—800 MHZ BAND RECONFIGURATION IMPLEMENTATION SCHEDULE

NPSPAC region	Description of region	Wave	Approximate start date for each wave
1	Alabama	3	1/3/06
2	Alaska	4	4/3/06
3	Arizona	4	4/3/06
4	Arkansas	2	10/3/05
5	California (Southern)	4	4/3/06
6	California (Northern)	1	6/27/05
7	Colorado	1	6/27/05
8	NY City area (NY, NJ, & CT)	1	6/27/05
9	Florida	3	1/3/06
10	Georgia	3	1/3/06
11	Hawaii	1	6/27/05
12	Idaho	2	10/3/05
13	Illinois (except Southern Lake Michigan counties).	1	6/27/05
14	Indiana (except Southern Lake Michigan counties).	1	6/27/05
15	Iowa	2	10/3/05
16	Kansas	2	10/3/05
17	Kentucky	2	10/3/05
18	Louisiana	2	10/3/05
19	New England	1	6/27/05
20	Maryland, Northern VA & DC	1	6/27/05
21	Michigan	4	4/3/06
22	Minnesota	2	10/3/05
23	Mississippi	3	1/3/06
24	Missouri	2	10/3/05
25	Montana	2	10/3/05
26	Nebraska	2	10/3/05
27	Nevada	1	6/27/05
28	Eastern PA, DE & Southern NJ	1	6/27/05
29	New Mexico	4	4/3/06
30	Eastern Upstate NY	4	4/3/06
31	North Carolina	3	1/3/06
32	North Dakota	2	10/3/05
33	Ohio	4	4/3/06
34	Oklahoma	2	10/3/05
35	Oregon	1	6/27/05
36	Western PA	4	4/3/06
37	South Carolina	3	1/3/06
38	South Dakota	2	10/3/05
39	Tennessee	2	10/3/05
40	Texas (Central & Northeast)	2	10/3/05
41	Utah	1	6/27/05
42	Virginia	1	6/27/05
43	Washington	4	4/3/06
44	West Virginia	2	10/3/05

ATTACHMENT—800 MHZ BAND RECONFIGURATION IMPLEMENTATION SCHEDULE—Continued

NPSPAC region	Description of region	Wave	Approximate start date for each wave
45	Wisconsin (except Southern Lake Michigan counties.	1	6/27/05
46	Wyoming	2	10/3/05
47	Puerto Rico	2	10/3/05
48	U.S. Virgin Islands	2	10/3/05
49	Texas (Central—Austin area)	2	10/3/05
50	Texas (West & Central—Midland area)	4	4/3/06
51	Texas (East—Houston area)	2	10/3/05
52	Texas (Panhandle, High Plains & Northwest—Lubbock Area).	2	10/3/05
53	Texas (Southern—San Antonio area)	4	4/3/06
54	Southern Lake Michigan (MI, WI, IL, & IN)	1, [The counties in MI will be in Wave 4 because of border area issues.].	6/27/05, [4/3/06 for Wave 4 systems]
55	Western Upstate NY	4	4/3/06
	Large non-public safety systems that cover multiple NPSPAC regions assigned to different waves.	Reconfiguration will begin in conjunction with the regions in the first wave in which the licensee has a system to be reconfigured.	

[FR Doc. 05–8209 Filed 4–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at (202) 523–5793 or via e-mail at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010977–057.

Title: Hispaniola Discussion Agreement.

Parties: Crowley Liner Services; Seaboard Marine; Tropical Shipping and Construction Co. Ltd.; and Frontier Liner Services.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises the amount of security required under the agreement.

Agreement No.: 011375–062.

Title: Trans-Atlantic Conference Agreement.

Parties: Atlantic Container Line AB; A. P. Moller-Maersk A/S; Hapag-Lloyd Container Linie GmbH; Mediterranean Shipping Company, S.A.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and P&O Nedlloyd Limited.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Ukraine from the geographic scope.

Agreement No.: 011587–011.

Title: United States South Europe Conference.

Parties: A.P. Moller-Maersk A/S; P&O Nedlloyd Limited; and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Ukraine from the geographic scope.

Agreement No.: 011737–014.

Title: The MCA Agreement.

Parties: Atlantic Container Line AB; Alianca Navegacao e Logistica Ltda.; Antillean Marine Shipping Corporation; A.P. Moller-Maersk A/S; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Compania Sud Americana de Vapores S.A.; CP Ships (UK) Limited, d/b/a ANZDL and also as Contship Containerlines; CP Ships USA LLC, d/b/a Italia Di Navigazione LLC, Lykes Lines Limited LLC, and TMM Lines Limited LLC; Crowley Liner Services, Inc.; Dole Ocean Cargo Express, Inc.; Hamburg-Süd; Hapag-Lloyd Container Linie; HUAL AS; Montemar Maritima S.A.; Norasia Container Line Limited; Safmarine Container Lines N.V.; Tropical Shipping & Construction Co., Ltd.; Wallenius Wilhelmsen Lines AS.

Filing Party: James R. Halley, Esq.; Halley & Halley, P.A.; 328 Crandon Boulevard; Suite 224–225; Key Biscayne, Florida 33149.

Synopsis: The amendment removes Great White Fleet as a party to the agreement. It also merges Italia Di Navigazione LLC, Lykes Lines Limited LLC, and TMM Lines Limited LLC under the name of CP Ships USA LLC.

Agreement No.: 011740–001.

Title: Maersk Sealand/CMA CGM Antilles Guyane/Marfret Mediterranean/Caribbean Vessel Sharing Agreement.

Parties: A.P. Moller-Maersk A/S; CMA CGM Antilles Guyane and Compagnie Maritime Marfret.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises the names of Maersk Sealand and CMA CGM Antilles Guyane, deletes Nordana as a party to the agreement and revises the vessel contribution and allocation.

Agreement No.: 011913.

Title: King Ocean/Maersk Sealand Vessel Sharing Agreement.

Parties: King Ocean Services Limited and A.P. Moller-Maersk A.S.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes King Ocean to charter space to Maersk Sealand in the trades between Port Everglades, Florida and Aruba, Curacao, and Venezuela.

By order of the Federal Maritime Commission.

Dated: April 22, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–8408 Filed 4–26–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Venus Lines Inc., 15 Enclosure Drive, Morganville, NJ 07751. *Officer:* Sundar varadhan Raghuveer President (Qualifying Individual).

Echo Trans World Inc., 350 Vanderbilt Motor Pkwy., Suite 204, Hauppauge, NY 11788. *Officer:* Deror Balileti, Owner (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Ocean Star Shipping Inc., East 80, Route 4, Suite 410, Paramus, NJ 07652. Officers: Lemin Li, Vice President (Qualifying Individual), Charles S. Wang, President.

Apex Logistics SFO Inc., 111 Anza Blvd., Suite 120, Burlingame, CA 94010. *Officer:* Hong Lee, Owner (Qualifying Individual).

Adora International Services, dba Adora Shipping Co., 16809 FM 1485, Conroe, TX 77306. Dora Gay Hogland, Sole Proprietor.

Toshiba Logistics America, 9740 Irvine Boulevard, Irvine, CA 92618. Officers: Lisa Brown, Asst. Sec. of NVO Oper. (Qualifying Individual), Masato Hamzaki, President.

Dama Cargo Logistics, Corp., 11356 SW 85 Lane, Miami, FL 33173. Officers: Cesar A. Baez, Secretary (Qualifying Individual), Raymond A. Alonzo, President.

Dated: April 22, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–8409 Filed 4–26–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov.*

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Report of Net Debit Cap.

Agency form number: FR 2226.

OMB control number: 7100–0217.

Frequency: Annual.

Reporters: Depository institutions, Edge and agreement corporations, U.S. branches and agencies of foreign banks.

Annual reporting hours: 1,780 hours.

Estimated average hours per response: 1.0 hour.

Number of respondents: 1,785.

General description of report: This information collection is mandatory (12 U.S.C. 248(i), 248–l, and 464) and may be accorded confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).

Abstract: Federal Reserve Banks collect these data annually to provide information that is essential for their administration of the Board's Payments System Risk policy. The Report of Net Debit Cap comprises three resolutions, which are filed by an institution's board of directors depending on the institution's needs. The first resolution is used to establish a de minimis net debit cap, and the second resolution is used to establish a self-assessed net debit cap. Institutions use these two resolutions to establish a capacity for daylight overdrafts that is greater than the capacity that is typically assigned by a Reserve Bank. Institutions use part one of the third resolution, a two-part resolution, to establish additional collateralized capacity. Institutions use part two of the third resolution if they have been approved to receive additional collateralized capacity and pledge securities in transit to support the additional capacity. Copies of the current model resolutions are located in Appendix B of the Guide to the Federal Reserve's Payments System Risk policy.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. *Report title:* Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks.

Agency form number: FR 2225.

OMB control number: 7100–0216.

Frequency: Annual.

Reporters: Foreign banks with U.S. branches or agencies.

Annual reporting hours: 42 hours.

Estimated average hours per response: 1.0 hour.

Number of respondents: 42.

General description of report: This information collection is voluntary (12 U.S.C. 248(i), 248–l, and 464) and is not given confidential treatment.

Abstract: This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve Board's Payments System Risk (PSR) policy. A key component of the PSR policy is a limit, or a net debit cap, on an institution's negative intraday balance in its Federal Reserve account. The Federal Reserve calculates an institution's net debit cap by applying the multiple associated with the net debit cap category to the institution's capital. For foreign banking organizations (FBOs), a percentage of the FBO's capital measure, known as the U.S. capital equivalency, is used to calculate the FBO's net debit cap. Currently, an FBO with U.S. branches or agencies may voluntarily file the FR 2225 to provide the Federal Reserve with its capital measure. Because an FBO that files the FR 2225 may be able to use its total capital in the net debit

cap calculation, an FBO seeking to maximize its daylight overdraft capacity may find it advantageous to file the FR 2225. An FBO that does not file FR 2225 may use an alternative capital measure based on its nonrelated liabilities.

Current actions: On February 14, 2005, the Federal Reserve issued for public comment proposed revisions to the FR 2225 (70 FR 7504). The revisions included making the reporting of foreign currency translations consistent with the reporting requirements detailed in other Federal Reserve information collections, resulting in the deletion of an item from the reporting form. The Federal Reserve did not receive any comments. The changes will be implemented as proposed.

2. *Report titles:* Application for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; Notice for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; and Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities.

Agency form numbers: FR Y–3, FR Y–3N, and FR Y–4.

OMB control number: 7100–0121.

Frequency: Event-generated.

Reporters: Corporations seeking to become bank holding companies (BHCs), or BHCs and state chartered banks that are members of the Federal Reserve System.

Annual reporting hours: 19,100 hours.

Estimated average hours per response: FR Y–3, Section 3(a)(1): 49 hours; FR Y–3, Section 3(a)(3) and 3(a)(5): 59.5 hours; FR Y–3N, Sections 3(a)(1), 3(a)(3), and 3(a)(5): 5 hours; FR Y–4, complete notification: 12 hours; FR Y–4, expedited notification: 5 hours; and FR Y–4, post-consummation: 0.5 hours.

Number of respondents: 556.

General description of reports: This information collection is mandatory (12 U.S.C. 1842(a), 1844(b), and 1843(j)(1)(b)) and may be accorded confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).

Abstract: The Federal Reserve requires the application and the notifications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Bank Holding Company Act of 1956. The forms collect information concerning proposed BHC formations, acquisitions, and mergers, and proposed nonbanking activities. The Federal Reserve must obtain this information to evaluate each individual transaction with respect to permissibility, competitive effects, adequacy of financial and managerial resources, net public benefits, and impact on the convenience and needs of affected communities.

Current Actions: On February 14, 2005, the Federal Reserve issued for public comment proposed revisions to the FR Y–3, FR Y–3N, and FR Y–4 (70 FR 7504). The proposed modifications are technical in nature, as no material change in the relevant statutes and regulation has occurred since 2001. The proposed changes improve consistency within the three reporting forms, clarify certain language, and provide additional practical guidance to filers to reduce or avoid processing delays in the applications process. The reporting forms also have been modified to reflect substantial applications guidance and related reference material that was added to the Federal Reserve Board's public Web site in May 2004. Each proposed change is intended to facilitate and clarify the overall filing process for a BHC. The Federal Reserve did not receive any comments. The changes will be implemented as proposed.

3. *Report title:* International Applications and Prior Notifications under Subparts A and C of Regulation K.

Agency form number: FR K–1.

OMB control number: 7100–0107.

Frequency: Event-generated.

Reporters: State member banks, national banks, bank holding companies, Edge and agreement corporations, and certain foreign banking organizations.

Annual reporting hours: 772 hours.

Estimated average hours per response: Attachments A and B, 11.5 hours; Attachments C through G, 10 hours; Attachments H and I, 15.5 hours; Attachment J, 10 hours; Attachment K, 20 hours.

Number of respondents: 43.

General description of report: This information collection is mandatory (12 U.S.C. 601–604(a), 611–631, 1843(c)(13), 1843(c)(14), and 1844(c)) and is not given confidential treatment. The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Abstract: The FR K–1 comprises a set of applications and notifications that govern the formation of Edge or agreement corporations and the international and foreign activities of U.S. banking organizations. This set of applications and notifications is in the form of eleven attachments (labeled attachment A through K) and they collect information on projected financial data, purpose, location, activities, and management. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956.

Current Actions: On February 14, 2005, the Federal Reserve issued for public comment proposed revisions to the FR K–1 (70 FR 7504). The Federal Reserve revised the applications and notifications in order to improve clarity, more accurately reflect what information U.S. banking organizations should provide, and request information that is considered necessary in evaluating proposals. Attachment A, Item 11, and Attachment B, Item 5, was slightly modified by removing the parenthetical statement regarding operations of the branch and adding the words ''assets and liabilities.'' Attachment C, Item 7.a was modified to remove the existing parenthetical about Edge corporation capitalization, which is considered no longer necessary. Attachment C, Item 9, was modified to remove the word ''banking'' from the first line to reflect the fact that the item should be submitted by all foreign institutions, not just foreign banking institutions. Attachments H and I were revised by adding a new question related to the Federal Reserve's access to information. This new question requests the same information for foreign investments that is currently requested for foreign branches and is considered necessary in evaluating proposals. Attachments H and I were also modified to add a footnote to clarify that the form should not be used for investments made by a bank holding company using financial holding company authority. The Regulation K section citations on Attachment H were corrected to accurately reflect when the form should be used. The Federal Reserve did not receive any comments. The changes will be implemented as proposed.

Board of Governors of the Federal Reserve System, April 21, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–8392 Filed 4–26–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 11, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. George E. Scharpf; Patricia M. Scharpf; and G. Gregory Scharpf, all of Colts Neck, New Jersey; Eric Francis Scharpf, Haverford, Pennsylvania; Elizabeth M. Scharpf, Colts Neck, New Jersey; George E. Scharpf Irrevocable Trust, Old Bridge, New Jersey; Joseph J. DiSepio, Jamesburg, New Jersey; Margueritte DiSepio, Jamesburg, New Jersey; Estate of Ernest J. Scharpf, Jr., Jamesburg, New Jersey; The EJ Scharpf Foundation, Old Bridge, New Jersey; George E. Scharpf Trust for the benefit of Ernest J. Scharpf, Old Bridge, New Jersey; to retain voting shares of Amboy Bancorporation, Old Bridge, New Jersey, and thereby indirectly retain voting shares of Amboy National Bank, Old Bridge, New Jersey.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Walter Carlson, Naples, Florida, and Dennis Shull, Indianola, Iowa; to acquire additional voting shares of Morning Sun Bank Corp., Morning Sun, Iowa, and thereby indirectly acquire voting shares of Iowa State Bank, Wapello,Iowa.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. T. Coleman Andrews, III, Jackson, Wyoming; Everette G. Allen, Jr., Richmond, Virginia; Allen S. Andrews, Middleburg, Virginia; Timothy A. Anonick, Midlothian, Virginia; John C. Backus, Jr., Great Falls, Virginia; David F. Bullock, Alpin, Utah; Marvin P. Bush, Alexandria, Virginia; Christopher H. Daniell, Hopkinton, New Hampshire; Laurence C. Fentriss, Richmond, Virginia; Davila Jaime, McAllen, Texas; Ronald P. Mika, Alpine, Utah; Geoffrey S. Rehnert, Weston, Massachusetts; Kevin W. Wilson, Virginia Beach, Virginia; and Marc B. Wolpow, Wellesley, Massachusetts; to acquire voting shares of Rock Springs American Bancorporation, Inc., and thereby indirectly acquire voting shares of American National Bank of Rock Springs, both of Rock Springs, Wyoming.

Board of Governors of the Federal Reserve System, April 21, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–8393 Filed 4–26–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Heritage First Bancshares, Inc., Rome, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of DeKalb Bank, Crossville, Alabama.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. CSAB Holdings, L.L.C., Dallas, Texas; to become a bank holding company by acquiring 36 percent of the voting shares of Parkway National Bancshares, Inc., Plano, Texas, and thereby indirectly acquire Parkway National Bancshares of Delaware, Inc., Wilmington, Delaware, and Parkway Bank, N.A., Plano, Texas.

Board of Governors of the Federal Reserve System, April 21, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–8395 Filed 4–26–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Heritage First Bancshres, Inc., Rome, Georgia; to acquire Heritage First Bank, Rome, Georgia, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, April 21, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–8394 Filed 4–26–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, May 2, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, April 22, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–8490 Filed 4–22–05; 4:57 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

RIN 3084–AA94

Notice of Federal Trade Commission Publication Incorporating Model Forms and Procedures for Identity Theft Victims

AGENCY: Federal Trade Commission (Commission).

ACTION: Notice of Federal Trade Commission publication incorporating model forms and procedures for identity theft victims.

SUMMARY: The Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act), amending the Fair Credit Reporting Act (FCRA), requires the Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, to develop a model form and procedures to be used by identity theft victims for contacting and informing creditors and consumer reporting agencies of the fraud. In this document, the Commission issues a notice of its publication of guidance containing such model forms and procedures.

DATES: Effective Date: This notice is effective on May 2, 2005.

ADDRESSES: Requests for copies of this notice should be sent to the Commission's Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. This notice is also available at the Commission's Web site, *www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Betsy Broder, Assistant Director, (202) 326–3228, and Naomi B. Lefkovitz, Attorney, (202) 326–3228, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The FACT Act was signed into law on December 4, 2003. Public Law 108–159, 117 Stat. 1952. Portions of the Act amend the FCRA to enhance consumers' ability to resolve problems caused by identity theft. Section 153 of the Act (section 621(f)(2) of the FCRA), requires the Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, to develop a model form and procedures to be used by identity theft victims for contacting and informing creditors and consumer reporting agencies of the fraud.

Identity theft can occur in various forms, including the unauthorized use of existing accounts or the opening of new accounts. The steps that victims need to take to resolve their problems may vary depending on the type of identity theft. The Commission has published guidance for victims, which describes the different types of identity theft problems that victims can confront and the best means of recovery. This guidance includes the ID Theft Affidavit and sample letters as well as a description of the circumstances under which victims would use a particular form to contact creditors or consumer reporting agencies.[1]

For example, an identity theft victim can use the ID Theft Affidavit to dispute with a creditor an account opened fraudulently in the victim's name. Many creditors have agreed voluntarily to accept this standard-form affidavit to resolve such disputes. The guidance also provides sample letters that an identity theft victim can use when disputing with a creditor fraudulent charges to an existing account. Finally, the guidance offers victims sample letters that they can use, in combination with an ''Identity Theft Report,'' [2] when contacting a consumer reporting agency to block fraudulent accounts from their credit reports.

This guidance, *Take Charge: Fighting Back Against Identity Theft,* is available at *www.consumer.gov/idtheft* or by writing to: FTC, Consumer Response Center, Room 130–B, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

For several years, the Take Charge booklet (previously entitled *ID Theft: When Bad Things Happen to Your Good Name*) has been a straightforward and enormously successful communication tool that has been well-received by victims and other consumers, government agencies, industry, consumer groups, and law enforcement.

[1] The guidance does not substantially modify any existing ''collections of information'' as this term is defined under the Paperwork Reduction Act, 44 U.S.C. 3506. The FTC has already obtained approval from the Office of Management and Budget (''OMB'') for certain disclosures described in the FTC's guidance materials. The filing of identity theft complaints with the FTC is included in the FTC's clearance for administrative activities (OMB Control Number 3084–0047). In addition, the FTC obtained OMB clearance for the disclosure obligations resulting from its rulemaking on identity theft definitions (OMB Control Number 3084–0129). *See* 69 FR 63,922, 63,933 (Nov. 3, 2004).

[2] To obtain an ''Identity Theft Report,'' the guidance advises consumers to file a report with a local, state, or federal law enforcement agency, such as the local police, the State Attorney General, the U.S. Secret Service, the FTC, or the U.S. Postal Inspection Service. The ''Identity Theft Report'' is comprised of this law enforcement report, in combination with specific information about the circumstances of the consumer's identity theft and any additional information or documentation that a creditor or consumer reporting agency reasonably requests for the purpose of determining the validity of the consumer's claim. *See* 16 CFR 603.3.

The FTC staff regularly revises the booklet with the most up-to-date information on identity theft recovery, based on contacts with each of those groups. It recently has been updated to include the new FACT Act rights. Identity theft takes many forms, and victims have several avenues to recovery. The Take Charge booklet offers consumers and business meaningful guidance and useful tools for resolving the many different issues facing identity theft victims, yet it remains flexible enough to respond to the always changing circumstances of this crime. The Commission believes that publication of the revised booklet represents the best method of complying with the Act's model form and procedures requirement.

As set forth under section 153 of the FACT Act (section 621(f)(2) of the FCRA), the Commission has consulted with the Federal banking agencies and the National Credit Union Administration. Such consultation and this notice of the Commission's publication containing model forms and procedures for identity theft victims fulfills the Commission's statutory obligation.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–8376 Filed 4–26–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nominations Requested/Open for the 2005 Secretary's Innovation in Prevention Awards

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) seeks nominations of public and private sector organizations to receive the 2005 Secretary's Innovation in Prevention Awards Initiative. This activity is part of a broader Departmental initiative called Steps to a Healthier U.S. that advances President George W. Bush's HealthierUS goal of helping Americans live longer, better and healthier lives. The statutory authority for this health promotion activity is Section 1703 [42 U.S.C. 300u–2] from Title XVII of the Public Health Service Act. The Secretary's Innovation in Prevention Awards Initiative will identify and celebrate outstanding organizations that have implemented innovative and creative chronic disease prevention and health promotion programs. To be nominated, a program must address at least one of the following risk factors:

(1) Obesity
(2) Physical activity; and
(3) Nutrition

The Department intends that these awards will provide an opportunity to increase public awareness of creative approaches to develop and expand innovative health programs and duplication of successful strategies.

Awards will be given in the following categories:

- Faith-Based and Community Initiatives
- Health Care Delivery
- Healthy Workplace

—Large Employer >500 employees
—Small Employer <500 employees

- Non-Profit
- Public Sector
- Schools (K–12)

The following criteria will be taken into consideration upon review:

- Creativity/Innovation
- Leadership
- Sustainability
- Replicability
- Effectiveness
- Receipt of national award(s)

DATES: Nominations must be received by 5:00 PM EDT, June 9, 2005.

Nominations: Partnership for Prevention, a 501(c)3 focused on health promotion, is coordinating the nomination process for the Innovation in Prevention Awards on behalf of the HHS. Nominations can only be made online at *http://www.prevent.org/awards/*. For more information, contact Partnership for Prevention at (202) 785–4943 or 2005 *InnovationAwards@prevent.org.* Partnership for Prevention may request additional information as necessary.

SUPPLEMENTARY INFORMATION: HHS is the U.S. government's principal agency for promoting and protecting the health of all Americans. HHS manages many programs, covering a broad spectrum of health promotion and disease prevention services and activities. Leaders in the business community, State and local government officials, tribes and tribal entities and charitable, faith-based, and community organizations have expressed an interest in working with the Department to promote healthy choices and behaviors. The Secretary welcomes this interest. With this notice, the Secretary outlines opportunities to identify and celebrate outstanding organizations that have implemented innovative and creative chronic disease prevention and health promotion programs.

Dated: April 20, 2005.

Donald A. Young,

Acting Principal Deputy Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–8461 Filed 4–26–05; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging

AGENCY: Administration on Aging, HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given of the fifth Policy Committee meeting concerning planning for the 2005 White House Conference on Aging. The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person listed below in advance of the meeting.

DATES: The meeting will be held Wednesday, May 18, 2005, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Grand Hyatt, 1000 H Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Kim Butcher, (301) 443–2887, or e-mail at *Kim.Butcher@whcoa.gov*. Registration is not required. Seating is on a first come, first-served basis.

SUPPLEMENTARY INFORMATION: Pursuant to the Older Americans Act Amendments of 2000 (Pub. L. 106–501, November 2000). the Policy Committee will meet to continue discussions and planning for the 2005 White House Conference on Aging. In addition, there will be presentations by David Eisner, Chief Executive Officer of the Corporation for National and Community Service, and Michael O'Grady, Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

Dated: April 22, 2005.

Edwin L. Walker,

Deputy Assistant Secretary for Policy and Programs.

[FR Doc. 05–8434 Filed 4–26–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Academic Partners for Excellence in Environmental Public Health Tracking

Announcement Type: New.

Funding Opportunity Number: RFA EH–05074.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent (LOI) Deadline: May 27, 2005.

Pre-Application Conference Calls: May 16, 2005.

Application Deadline: June 27, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under section 301 of the Public Health Service Act, [42 U.S.C. section 241], as amended.

Purpose: The purpose of the program is to provide expertise and support to the National Environmental Public Health Tracking Program (NEPHTP) in the development and utilization of the National Environmental Public Health Tracking Network (NEPHTN). Additional information about the NEPHTN and funded activities at state and local government levels is provided at *http://www.cdc.gov/nceh/tracking.* This program addresses the ''Healthy People 2010'' focus areas of Environmental Health and Public Health Infrastructure.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Increase the understanding of the relationship between environmental exposures and health effects.

This announcement contains two separate parts: Part I and Part II in order to accommodate the range of specialty activities needed to support the development of the NEPHTN. Each applicant can only apply for one part. Please indicate in your abstract and in the research plan which component your application is directed to. These projects will move the nation toward improved environmental public health surveillance and response capacity for development of the NEPHTN. Detailed description of each project is included under ''Activities.''

Research Objectives:

• Nature of the research problem

The environment plays an important role in human development and health. Researchers have linked exposures to some environmental hazards with specific diseases. Currently, no systems exist at the state or national level to track many of the exposures and health effects that may be related to environmental hazards. In most cases, existing environmental hazard, exposure, and disease tracking systems are not linked together. Because existing systems are not linked, it is difficult to study and monitor relationships among hazards, exposures, and health effects.

CDC is developing a National Environmental Public Health Tracking Network that integrates data about environmental hazards and exposures with data about diseases that are possibly linked to the environment. However, to develop this Network, methods for data collection, data linkage, and data analysis will need to be improved and evaluated. Information from this network should guide etiologic research into the relationship between environmental factors and human health. Ultimately, state and local public health agencies must have a trained workforce capable of operating and utilizing an EPHT network to provide substantial public health impact.

• Scientific knowledge to be achieved through research supported by this program

Increased understanding of: (1) The relationship between environmental hazards, exposures and health effects; (2) the methods required to collect, integrate, analyze, and interpret data; and (3) effective techniques for dissemination of information to protect and improve health.

• Objectives of this research program

(1) Innovative, cost-effective data collection strategies that state and local health departments can use to obtain valid, high quality data on environmental health effects, exposures, and hazards.

(2) Data linkage methods for combined analysis of health and environmental data that could be utilized by state and local environmental public health programs in building an EPHTN.

(3) Statistical algorithms that could be used by state and local environmental public health programs to analyze trends and detect patterns of health effects occurrence, population exposure, or hazard levels in the environment that may indicate a problem.

(4) Greater understanding of the relationship between particular health effects and environmental exposures and/or hazards.

(5) Effective training tools for all areas critical to the development, operation, maintenance, and utilization of an EPHTN.

• Identify the types of research and experimental approaches that are being sought to achieve the objectives Research to support these objectives includes public health surveillance methods evaluation, epidemiological studies, and training effectiveness evaluations.

Activities: In conducting activities to achieve the purpose of this program, the awardee will be responsible for the activities under Awardee Activities, and CDC will be responsible for the activities listed under CDC Activities. Awardee activities for this program are as follows:

Awardee Activities: Recipients under Part I must develop and submit a research plan to address recipient activities a–h.

Part I Recipient Activities: Provide lead expertise in the development of public health surveillance methods. These should, at a minimum, include:

(a) Evaluating current surveillance methodology and developing innovative, cost-effective data collection strategies (including consideration of non-traditional data sources) that state and local health departments can use to obtain valid, high quality data on environmental health effects, exposures, and hazards.

(b) Developing data linkage methods for combined analysis of health and environmental data that could be utilized by state and local environmental public health programs in building an EPHTN.

(c) Developing statistical algorithms that could be used by state and local environmental public health programs to analyze trends and detect patterns of, and relationships between, health effects occurrence, population exposure, or hazard levels in the environment; and generating alerts when unusual occurrences of health effect, exposure, or hazard are detected.

(d) Conduct an epidemiology study examining the relationship between a health effect and an environmental exposure and/or hazard in collaboration with environmental public health tracking program partners and CDC. This study should utilize data from a state or local environmental public health tracking program, as well as other summary or secondary data sources in the design and/or analysis phase. This may require the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. Where CDC scientists are involved, the CDC IRB will initially review and approve the protocol, with a minimum of an annual

review until the research project is completed.

(e) Provide training for the nation's future Environmental Public Health workforce through the provision of student academic tracks in the areas of environmental epidemiology, public health surveillance methods, and/or internship opportunities.

(f) Build capacity at the state and local level through the communication of project accomplishments, barriers, and lessons learned with EPHT (surveillance) Program partners and other critical stakeholders at CDC-sponsored seminars, stakeholder meetings, quarterly conference calls, and by posting information to an EPHT web forum.

(g) Participate in workgroups with EPHT Program partners. Applicant will also be required to work in conjunction with the CDC Environmental Public Health Tracking Program's Standards and Network Development workgroup and other relevant workgroups and activities critical to the development of the EPHTN.

(h) Collaborate with the relevant academic partners for excellence involved with the EPHT Program on training activities to promote the dissemination of knowledge from this focus area to other program partners.

Recipients under Part II must develop and submit a research plan to address recipient activities a–h.

Part II Recipient Activities:

(a) Develop training tools and provide training to state and local health department partners participating in the NEPHT Program, in collaboration with CDC and other funded academic partners involved with the EPHT program. Training should include, but not be limited to, all areas critical to the development, operation, maintenance, and utilization and dissemination of information from the Network. These should include public health surveillance methods, GIS, spatial statistics and other environmental assessment methods, and risk communication.

(b) Collaborate with other funded academic partners to identify and develop focus areas for continuous training.

(c) Develop and conduct at least two regional and one annual training workshop for Environmental Public Health Tracking grantees covering public health surveillance methods, environmental epidemiology, risk communication, Geographic Information Systems, (GIS), spatial statistics and other assessment methods, prevention effectiveness, program evaluation and other subjects critical to the development, maintenance, utilization, and dissemination of information from an EPHTN.

(d) Conduct an assessment of: (1) The key issues that influence perceptions concerning the risk posed by environmental hazards or exposures; and (2) techniques to communicate information on environmental hazards, exposures, or risk most likely to promote protective actions. This assessment could include comprehensive literature reviews, review of state and local public health communications activities, risk perception surveys, convening a panel of communications experts, or other assessment strategies. As a product of this assessment, develop written guidance on methods to disseminate information from an EPHTN that would most effectively communicate this information to a variety of audiences representing diverse social and cultural backgrounds, including policy makers, healthcare providers, and community representatives.

(e) Develop, test, disseminate, and evaluate communication strategies for health effects, exposure and hazard information from a surveillance network (EPHTN) that take into account risk perception differences among various audiences. Collaborate with CDC to promote the dissemination of knowledge from this focus area to other program partners.

(f) Provide training for the nation's future Environmental Public Health workforce through the provision of student academic tracks in the areas of environmental epidemiology, public health surveillance methods, and risk communication strategies and/or internship opportunities.

(g) Build capacity at the state and local level through the communication of project accomplishments, barriers, and lessons learned with Environmental Public Health Tracking (surveillance) Program partners and other critical stakeholders at CDC-sponsored seminars, stakeholder meetings, quarterly conference calls, and by posting information to an EPHT web forum.

(h) Participate in workgroups with EPHT Program partners.

CDC Activities: In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

a. Foster relationships among academic partners and state and local health departments by assisting in the sharing of information through an EPHT Web site, seminars, an annual stakeholder meeting, quarterly conference calls, and other direct interactions.

b. Convene workgroups to foster the development of the NEPHTN.

c. Participate in designing, developing, and evaluating surveillance methods.

d. Participate in the development of statistical algorithms to analyze trends and detect patterns of health effects occurrence, population exposure, or hazard levels in the environment that may indicate a problem.

e. Participate in the protocol development, study implementation, data analysis, interpretation of results, and dissemination of epidemiology study findings including report writing and oral presentation. When involved in a scientific study, the CDC IRB will initially review and approve the protocol, with a minimum annual review until the research project is completed.

f. Provide assistance in development of training materials on surveillance methods, evaluation, risk communication, and other topics for state and local agencies and other EPHT Program partners, including the dissemination of information about strategies for communicating health effect, exposure, and hazard information from an EPHT network.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U19—Research Programs (Cooperative Agreements).

Fiscal Year Funds: 2005.

Approximate Total Funding: $2,000,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: Five.

Approximate Average Award: $400,000 (This amount is for the first 12-month budget period.)

Floor of Award Range: $350,000.

Ceiling of Award Range: $450,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 1, 2005.

Budget Period Length: 12 months.

Project Period Length: Five (5) years. Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Assistance will be provided to United States Schools of Public Health, accredited by the Council on Education of Public Health, which are associated with or have access to programs in environmental epidemiology, environmental sciences, health education, health/risk communication, clinical medicine, and medical informatics. Eligibility is open to these applicants because they provide: (1) The technical expertise in the wide range of disciplines needed to further develop the theoretical and scientific base for environmental public health tracking (surveillance), and develop and test for new methodology essential to support state and local programs; and (2) a training ground for the nation's future environmental public health workforce. This wide range of disciplines and expertise is often unavailable or difficult to access by state or local public health agencies yet will be required for an environmental public health tracking network to fulfill all the critical functions of a public health surveillance system.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- All documentation submitted as evidence of eligibility as outlined in Section III.1 above should be placed directly behind the face page (first page) of your application. Applications that fail to submit evidence requested above will be considered non-responsive and returned without review.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible To Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from under-represented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed application
- Component of this announcement, Part I or II, you wish to be considered for
- Name, address, E-mail address, telephone number, and fax number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Announcement

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone 301–435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government.

Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This announcement uses the non-modular budgeting format.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

V.3. Submission Dates and Times

LOI Deadline Date: May 27, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not mandatory, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 27, 2005.

Explanation of Deadlines: LOIs and Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Scientific Review Administrator, Attn: Kathleen Shaver Madden, Ph.D., CDC/Office of Public Health Research, One West Court Square, Suite 7000, Rm 7018, Mailstop D–72, Decatur, GA 30030, Tel: 404–371–5253, Fax: 404–371–5215, E-mail: *kmn0@cdc.gov.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—RFA EH–05074, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Scientific Review Administrator, Attn: Kathleen Shaver Madden, Ph.D. (RFA EH–05074), CDC/Office of Public Health Research, One West Court Square, Suite 7000, Rm 7018, Mailstop D–72, Decatur, GA 30030, Tel: 404–371–5253, Fax: 404–371–5215, E-mail: *kmn0@cdc.gov.*

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the project scope reflect a clear understanding of the purpose and requirements of the cooperative agreement and the conceptual framework, intent, and challenges of implementing a National Environmental Public Health Tracking Network? Are the project scope, key objectives, project milestones, products, and performance measures clearly described and appropriate for the project? Are the strategy, schedule, and resources appropriate for timely completion of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics and provide plans for mitigating project risk?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Are the resumes/curricula vita of key personnel included? If there are several researchers involved, is this there a clear description of how the principal investigator will manage the project team and, if necessary, coordinate with other academic departments or groups participating in this endeavor? Are all researcher and staff roles and responsibilities clearly described and linked to project activities and milestones?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following programmatic priorities will be considered in the determination of scientific merit and priority score:

1. *Collaborative Relationships:* The extent to which the applicant identifies key partners to carry out proposed activities and provides evidence that these organizations/agencies support, and will be actively involved in, carrying out the project. Letters of Support from appropriate personnel, such as department chairs, must be provided if applicant is utilizing affiliate institutions to provide expertise in environmental epidemiology, environmental sciences, health education, health communication,

clinical medicine, or medical informatics. The extent to which the applicant describes past and current collaborations with Federal agencies, state and local health and environmental agencies, professional organizations, community-based organizations, and other relevant organizations will be considered.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community (ies) and recognition of mutual benefits.

Care and Use of Vertebrate Animals: If vertebrate animals are to be used in the project, the five items described under Section f. of the PHS 398 research grant application instructions will be assessed.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the National Center for Environmental Health (NCEH). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by the NCEH in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by the NCEH, Office of Science.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities
- Preference may be given to the establishment of academic partnerships in different geographic areas of the United States.

V.3. Anticipated Announcement and Award Dates

It is anticipated that notification of awards will go out to successful applicants on or before August 31, 2005 with a projected start date on or before October 1, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–22 Research Integrity
- AR–24 Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 9/2004 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Mildred Williams-Johnson, Ph.D., Scientific Program Administrator, CDC/ATSDR, 1600 Clifton Road, NE, Mailstop E17, Atlanta, GA 30333, Telephone: 404–498–0639, E-mail: *MWilliams-Johnson@cdc.gov.* or Judy Qualters, Ph.D; Scientific Program Collaborator, 1600 Clifton Road, NE; M/S E–19, Atlanta, GA 30333, Telephone: 404–498–1270, E-mail: *epht@cdc.gov.*

For questions about peer review, contact: Kathleen Shiver Madden, Ph.D., Scientific Review Administrator, CDC/

Office of Public Health Research, One West Court Square, Suite 7000, Rm 7018, Mailstop D–72, Decatur, GA 30030, Telephone: 404–371–5253, E-mail: *Kmn0@cdc.gov.*

For financial, grants management, or budget assistance, contact: Edna Green, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2743, E-mail: *EGreen@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.'' Additional Information about the Environmental Public Health Tracking Program and current activities of the academic partners can be found at *http://www.cdc.gov/nceh/tracking.*

Dated: April 21, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–8398 Filed 4–26–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cellular, Tissue and Gene Therapies Advisory Committee (Formerly Biological Response Modifiers Advisory Committee); Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Cellular, Tissue and Gene Therapies Advisory Committee (formerly Biological Response Modifiers Advisory Committee).

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 20, 2005, from 2 p.m. to approximately 4 p.m.

Location: 5515 Security Lane, rm. 1113, Rockville, MD. This meeting will be held by teleconference. The public is welcome to attend the meeting at the specified location. A speakerphone will be provided at this location for public participation in the meeting.

Contact Person: Gail Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512389. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will receive an update on individual research programs in the Division of Therapeutic Proteins, Center for Drug Evaluation and Research.

Procedure: On May 20, 2005, from 2 p.m. to approximately 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 13, 2005. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 13, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On May 20, 2005, from approximately 4 p.m. to 4:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss a review of individual FDA research programs.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gail Dapolito at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 18, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–8353 Filed 4–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel A T32 Application.

Date: June 14, 2005.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Raymond A. Petryshyn, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., 8th Fl., Room 8109, Bethesda, MD 20892, 301/594–1216, *petryshr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8414 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Centers for Medical Countermeasures Against Radiation.

Date: June 20–22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20862. 301/594–1289.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8422 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Planning Grant for Minority Institution/Cancer Center Colabo., Comprehensive Minority, Cooperative Planning Grant for Comprehensive Minority Inst. 020–021–022.

Date: June 13–14, 2005.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405. 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8423 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: May 19, 2005.

Open: 8:30 a.m. to 1:55 p.m.

Agenda: Report of Center Director and other issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th floor, Conference Room 10, Bethesda, MD 20892.

Closed: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PHD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892. 301–496–6023.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center home page: www.ncrr.nih.gov/newspub/minutes.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8419 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, University of Michigan.

Date: May 4–5, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn N Campus, 3600 Plymouth Road, Ann Arbor, MI 48105.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd., One Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892–4874, 301–435–0814, *lambert@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel.

Date: May 5, 2005.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Gaithersburg, 2 Montgomery Village Ave., Gaithersburg, MD 20879.

Contact Person: Guo Zhang, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1064, Bethesda, MD 20814–9692, (301) 435–0812, *zhanggu@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.308, Comparative Medicine, 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8420 Filed 4–26–05; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: June 9, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To discuss sleep research and education priorities and programs.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Carl E Hunt, MD, Director, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 6022, Bethesda, MD 20892. 301/435–0199.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: www.nhlbi.nih.gov/meetings/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8418 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Cardiovascular Complications of Type 1 Diabetes.

Date: May 11, 2005.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 777, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38oz@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8412 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Disease; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–7 (C1)

Date: May 11, 2005.

Time: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda, Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 777, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38oz@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–7 (C2).

Date: May 11, 2005.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 777, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38oz@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Disease and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8413 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel 2 Challenge Grants: Biodefense Product Development RFA–A1–04–029.

Date: May 6, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3121, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2606, *tshahan@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8415 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council Training, Career Development, and Special Programs Subcommittee.

Date: May 25, 2005.

Open: 8 a.m. to 9:30 a.m.

Agenda: To discuss the training programs of the Institute.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Diplomat/Ambassador Room, Bethesda, MD 20814.

Closed: 9:30 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Diplomat/Ambassador Room, Bethesda, MD 20814.

Contact Person: Margaret Jacobs, Acting Training and Special Programs Officer, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2154 MSC 9527, Bethesda, MD 20892–9527, 301–496–4188, *mj22o@nih.gov.*

Name of Committee: National Advisory Neurological Disorders and Stroke Council Clinical Trials Subcommittee.

Date: May 26, 2005.

Open: 8 a.m. to 9 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: John Marler, MD, Associate Director of Clinical Trials, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2216, Bethesda, MD 20892, (301) 496–9135, *jm137f@nih.gov.*

Name of Committee: National Advisory Neurological Disorders and Stroke Council Basic and Preclinical Programs Subcommittee.

Date: May 26, 2005.

Open: 8 a.m. to 9:30 a.m.

Agenda: To discuss basic and preclinical programs policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 8A28, Bethesda, MD 20892.

Closed: 9:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 8A28, Bethesda, MD 20892.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute for Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 26–27, 2005.

Open: May 26, 2005, 10:30 a.m. to 5 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Research and other administrative and program developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: May 27, 2005, 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8416 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Clinical and Data Management Services for NIDA/DPMC.

Date: May 4, 2005.

Time: 9 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1438

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8417 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Council for Biomedical Imaging and Biogengineering.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: May 25–26, 2005.

Open: May 26, 2005, 8 a.m. to 11:30 a.m.

Agenda: Presentation by the Institute Director and Executive Secretary.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Closed: May 26, 2005, 11:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Arlene Y. Chiu, PhD, Associate Director, Office of Research Administration, Office of Science Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Plaza, Suite 200, MSC–

5477, Bethesda, MD 20892–5477. 301–435–9218. *chiua@mail.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering Strategic Plan Development Subcommittee.

Date: May 25, 2005.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: Discussion of implementation of strategic plan.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Arlene Y. Chiu, PhD, Associate Director, Office of Research Administration, Office of Science Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Plaza, Suite 200, MSC–5477, Bethesda, MD 20892–5477. 301–435–9218. *chiua@mail.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering Training and Career Development Subcommittee.

Date: May 25, 2005.

Time: 4:30 p.m. to 5:30 p.m.

Agenda: Discussion of implementation of Training Career Development.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Arlene Y. Chiu, PhD, Associate Director, Office of Research Administration, Office of Science Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Plaza, Suite 200, MSC–5477, Bethesda, MD 20892–5477. 301–435–9218. *chiua@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include th4e name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nibib 1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8421 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Preventing Motor Vehicle Crashes Among Young Drivers: Research on the Effectiveness of Interventions to Increase Parental Management of Teen Driving.

Date: May 16, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8429 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Preventing Motor Vehicle Crashes Among Young Drivers; Research on Driving Risk Among Teen Drivers.

Date: May 16, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8430 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: May 26, 2005.

Open: 8:30 a.m. to 3 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Audotorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, PhD., Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business of professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home Page: *http://www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8432 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Behavioral Medicine Fellowships.

Date: April 27, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RANKL/OPG-Medicated Control of Vascular Calcification.

Date: May 6, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 19, 2005.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–8431 Filed 4–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21004]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: 1625–0060, 1625–0081, and 1625–0083

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of three Information Collection Requests (ICRs). The ICRs comprise (1) 1625–0060, Vapor Control Systems for Facilities and Tank Vessels, (2) 1625–0081, Alternate Compliance Program, and (3) 1625–0083, Operational Measures for Existing Tank Vessels Without Double Hulls. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before June 27, 2005.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2005–21004] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400

Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone 202–267–2326, or fax 202–267–4814 for questions on these documents; or telephone Ms. Andrea M. Jenkins, Program Manager, Docket Operations, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public participation and request for comments. We encourage you to respond to this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy''' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2005–21004], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Information Collection Requests

1. Title: Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 1625–0060.

Summary: The information is needed to ensure compliance with U.S. regulations for the design of facility and tank vessel vapor control systems (VCS). The information is also needed to determine the qualifications of a certifying entity.

Need: Title 33 United States Code (U.S.C.) 1225 and 46 U.S.C. 3703 authorize the Coast Guard to establish regulations to promote the safety of life and property of facilities and vessels. Title 33 Code of Federal Regulations (CFR) 154.800 establishes the applicability of the Coast Guard regulations for VCS and certifying entities.

Respondents: Owners and operators of facilities and tank vessels, and certifying entities.

Frequency: On occasion.

Burden Estimate: The estimated burden has been increased from 1,073 hours to 1,145 hours a year.

2. *Title:* Alternate Compliance Program.

OMB Control Number: 1625–0081.

Summary: This information is used by the Coast Guard to assess vessels participating in the voluntary Alternate Compliance Program (ACP) before issuance of a Certificate of Inspection.

Need: Title 46 United States Code (USC) 3306, 3316, and 3703 authorize the Coast Guard to establish vessel inspection regulations and inspection alternatives. Title 46 Code of Federal Regulations (CFR) part 8 prescribes the Coast Guard regulations for recognizing classification societies and enrollment of U.S.-flag vessels in ACP.

Respondents: Recognized classification societies.

Frequency: On occasion.

Burden Estimate: The estimated burden has been increased from 150 hours to 164 hours a year.

3. *Title:* Operational Measures for Existing Tank Vessels Without Double Hulls.

OMB Control Number: 1625–0083.

Summary: The information is needed to ensure compliance with U.S. regulations regarding operational measures for certain tank vessels while operating in the U.S. waters.

Need: Title 46 United States Code (U.S.C.) 3703a authorizes the Coast Guard to establish regulations to promote the safety of life and property of facilities and vessels. Title 33 Code of Federal Regulations (CFR) Part 157, Subparts G, H and I, prescribe the Coast Guard regulations for operational measures.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 18,006 hours to 6,807 hours a year.

Dated: April 20, 2005.

Dr. Nathaniel Heiner,

Acting, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–8350 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21003]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number: 1625–0040

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one

Information Collection Request (ICR). The ICR comprise 1625–0040, Continuous Discharge Book, Merchant Mariner Application, Physical Examination Report, Sea Service Report, Chemical Testing and Entry Level Physical Report. Before submitting the ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before June 27, 2005.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2005–21003] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone 202–267–2326, or fax 202–267–4814 for questions on the document; or telephone Ms. Andrea M. Jenkins, Program Manager, Docket Operations, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION

Public Participation and Request for Comments

We encourage you to respond to this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2005–21003], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Information Collection Requests

1. *Title:* Continuous Discharge Book, Merchant Mariner Application, Physical Examination Report, Sea Service Report, Chemical Testing and Entry Level Physical Report.

OMB Control Number: 1625–0040.

Summary: Title 46, U.S.C. 7302(b) mandates that the Coast Guard may issue a Continuous Discharge Book (CG Form 719A) upon request from an individual. Title 46, CFR 10.205(a), 10.207(a), 10.209(a)(1) and 12.02–9(a) mandate that each applicant for a license, certificate of registry or merchant mariner document shall make written application on a Coast Guard furnished form (CG Form 719B). Title 46, CFR 10.205(d), 10.207(e)(2), 10.209(d)(2), 12.05–5 and 12.15–5, mandate that each applicant for a license or merchant mariner document shall present a completed Coast Guard physical examination report (CG Form 719K) executed by the physician. Title 46, CFR 10.211 mandates criteria (CG Form 719S) for documenting sea service on vessels of less than 200 gross registered tons. Title 46, CFR 10.202(i) and 12.02–9(f) mandates that each applicant shall produce evidence (CG Form 719P) of having passed a chemical test for dangerous drugs. Title 46, CFR 12.02–17(e) requires entry-level merchant mariner document applicants to provide a statement (CG Form 719K/E) from a qualified practitioner attesting to the applicant's medical fitness to perform the functions for which the document is issued.

Need: The Coast Guard will use the information collected solely for the purpose of determining eligibility for issuance of a merchant mariner credential(s) that is, license, certificate of registry or merchant mariner document.

Respondents: Merchant Mariners.

Frequency: On occasion.

Burden Estimate: The estimated burden has been increased from 21,358 hours to 21,875 hours a year.

Dated: April 20, 2005.

Dr. Nathaniel Heiner,

Acting, Assistant Commandant for Command, Control, Communications Computers and Information Technology.

[FR Doc. 05–8452 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by May 27, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone 404/679–4176; facsimile 404/679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov.* Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Jeremy Lynn Jackson, Chapmanville, West Virginia, TE102292–0.

The applicant requests authorization to take (capture, identify, release) the following species: Virginia Big-eared bat *(Corynorhinus townsendii virginianus)*, gray bat *(Myotis grisescens)*, and Indiana bat *(Myotis sodalis)*. The proposed activities would take place while conducting presence/absence surveys, cave surveys, and abandoned mine surveys. The proposed activities would occur in West Virginia, Virginia, Tennessee, North Carolina, and Kentucky.

Applicant: Thomas Edward Dickinson, The Catena Group, Hillsborough, North Carolina, TE102324–0.

The applicant requests authorization to take (capture, identify, release, salvage relic shell material) the James spinymussel *(Pleurobema collina)*, tar spinymussel *(Elliptio steinstansana)*, dwarf-wedge mussel *(Alasmidonta heterodon)*, Carolina heelsplitter *(Lasmigona decorata)*, Appalachian elktoe *(Alasmidonta raveneliana)*, littlewing pearlymussel *(Pegias fabula)*, oyster mussel *(Epioblasma capsaeformis)*, and Cumberland bean *(Villosa trabalis)* while conducting presence/absence studies, population counts, and relocation activities. The proposed activities would occur in North Carolina, South Carolina, and Georgia.

Applicant: Temple-Inland Forest Products Corporation, Forest Products and Timber Land Management, Niboll, Texas, TE012336–0.

The applicant requests authorization to harass (install and monitor artificial nest cavities) red-cockaded woodpeckers *(Picoides borealis)* while conducting population management activities. The proposed activities would occur throughout the species ranges in Alabama, Georgia, Louisiana, and Texas.

Applicant: Jeffrey H. Schwierjohann, Winchester, Kentucky, TE102358–0.

The applicant requests authorization to take (capture, band, radio-tag, monitor nest, release) the following species: Indiana bat *(Myotis sodalis)*, gray bat *(Myotis grisescens)*, Virginia big-eared bat *(Corynorhinus townsendii virginianus)*, Ozark big-eared bat *(Corynorhinus townsendii ingens)*, Cumberland bean *(Villosa trabalis)*, Cumberlandian combshell *(Epioblasma brevidens)*, Cumberland elktoe *(Alasmidonta atropurpurea)*, ringpink *(Obovari retusa)*, blackside dace *(Phoxinus cumberlandensis), Apios priceana* (Price's potato-bean), *Arabis perstellata* (Braun's rock cress), *Helianthus eggertii* (Eggert's sunflower), *Spiraea virginiana* (Virginia spiraea), *Solidago albopilosa* (white-haired goldenrod), and *Trifolium stoloniferum* (running buffalo clover) while conducting presence/absence studies and determining the use of a project area by target species. The proposed activities would occur throughout the species ranges in Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Maryland, Missouri, North Carolina, Ohio, Oklahoma, Tennessee, Virginia, and West Virginia.

Applicant: Conservation Management Institute-Virginia Polytech Institute & State University, Blacksburg, Virginia, TE102410–0.

The applicant requests authorization to take (capture, identify, release) the following species: Ozark big-eared bat *(Corynorhinus townsendii ingens)*, gray bat *(Myotis grisescens)*, and Indiana bat *(Myotis sodalis)*. The proposed activities would take place while conducting presence/absence surveys. The proposed activities would occur at the Fort Chaffee Maneuver Training Center, Arkansas National Guard, Fort Smith, Arkansas.

Applicant: Florida Army National Guard, Camp Blanding Joint Training Center-Environmental Division, Starke, Florida, TE102418–0.

The applicant requests authorization to harass (capture, band, release, install and monitor artificial nest cavities, collect non-viable eggs) red-cockaded woodpeckers *(Picoides borealis)* while conducting presence/absence studies and population management activities. The proposed activities would occur on Camp Blanding Joint Training Center, Starke, Florida.

Applicant: Jeff M. Selby, Decatur, Alabama, TE100626–0

The applicant requests authorization to take (capture, identify, photograph, release) the following species: pygmy sculpin *(Cottus pygmaeus)*, blue shiner *(Cyprinella caerulea)*, spotfin chub *(Cyprinella monacha)*, slender chub *(Erimystax cahni)*, duskytail darter *(Etheostoma percnurum)*, slackwater darter *(Etheostoma Boschungi)*, Vermilion darter *(Etheostoma chermocki)*, Etowah darter *(Etheostoma etowahae)*, watercress darter *(Etheostoma nuchale)*, bayou darter *(Etheostoma rubrum)*, Cherokee darter *(Etheostoma scotti)*, bluemask darter *(Etheostoma sp.)*, boulder darter

(Etheostoma wapiti), cahaba shiner *(Notropis cahabae)*, Palezone shiner *(Notropis albizonatus)*, smoky madtom *(Noturus baileyi)*, yellow madtom *(Noturus flavipinnis)*, pygmy madtom *(Noturus stanauli)*, amber darter *(Percina antesella)*, goldline darter *(Percina aurolineata)*, Conasauga logperch *(Percina jenkinsi)*, snail darter *(Percina tanasi)*, blackside dace *(Phoxinus cumberlandensis)*, pallid sturgeon *(Scaphirhynchus albus)* Cumberland elktoe *(Alasmidonta atropurpurea)*, Appalachian elktoe *(Alasmidonta raveneliana)*, fat three-ridge *(Amblema neislerii)*, fanshell mussel *(Cyprogenia stegaria)*, Dromedary pearly mussel *(Dromus dromas)*, Chipola slabshell *(Elliptio chipolaensis)*, purple bankclimber *(Elliptoideus sloatianus)*, green-blossom pearly mussel *(Epioblasma torulosa gubernaculums)*, Tuberculed-blossom pearly mussel *(Epioblasma torulosa torulosa)*, Turgid-blossom pearly mussel *(Epioblasma turgidula)*, tan riffleshell *(Epioblasma florentina walkeri* (=E. walkeri), Cumberland combshell *(Epioblasma brevidens)*, oyster mussel *(Epioblasma capsaeformis)*, yellow-blossom pearly mussel *(Epioblasma florentina florentina)*, upland combshell mussel *(Epioblasma metastriata)*, southern acornshell mussel *(Epioblasma othcalogensis)*, southern combshell mussel *(Epioblasma penita)*, purple cat's paw pearly mussel *(Epioblasma obliquata obliquata)*, Turgid blossom pearly mussel *(Epioblasma turgidula)*, shiny pigtoe mussel *(Fusconaia cor)*, finerayed pigtoe mussel *(Fusconaia cuneolus)*, cracking pearlymussel *(Hemistena lata)*, pink mucket pearly mussel *(Lampsilis abrupta)*, fine-lined pocketbook mussel *(Lampsilis altilis)*, orangenacre mucket mussel *(Lampsilis perovalis)*, shinyrayed pocketbook *(Lampsilis subangulata)*, Alabama lamp mussel *(Lampsilis virescens)*, birdwing pearly mussel *(Conradilla Caelata)*, Alabama moccasinshell mussel *(Medionidus acutissimus)*, Coosa moccasinshell mussel *(Medionidus parvulus)*, Gulf moccasinshell *(Medionidus penicillatus)*, Ochlockonee moccasinshell *(Medionidus simpsonianus)*, pink ring *(Obovaria retusa)*, Little-wing pearly mussel *(Pegias fabula)*, white wartyback mussel *(Plethobasus cicatricosus)*, Orange-footed mussel *(Plethobasus cooperianus)*, clubshell *(Pleurobema clava)*, black clubshell *(Pleurobema curtum)*, southern clubshell mussel *(Pleurobema decisum)*, dark pigtoe pearly mussel *(Pleurobema furvum)*, southern pigtoe mussel *(Pleurobema georgianum)*, Cumberland pigtoe *(Pleurobema gibberum)*, flat pigtoe mussel *(Pleurobema marshalli)*, ovate clubshell mussel *(Pleurobema perovatum)*, rough pigtoe mussel *(Pleurobema plenum)*, oval pigtoe *(Pleurobema pyriforme)*, heavy pigtoe mussel *(Pleurobema taitianum)*, fat pocketbook *(Potamilus capax)*, inflated heelsplitter mussel *(Potamilus inflatus)*, triangular kidneyshell mussel *(Ptychobranchus greeni)*, rough rabbitsfoot *(Quadrula Cylindrica strigillata)*, Winged mapleleaf mussel *(Quadrula fragosa)*, cumberland monkeyface pearlymussel *(Quadrula intermedia)*, Appalachian monkeyface pearlymussel *(Quadrula sparsa)*, Stirrupshell mussel *(Quadrula stapes)*, pale lilliput pearly mussel *(Toxolasma cylindrellus)*, purple bean *(Villosa perpurpurea)*, Cumberland bean pearly mussel *(Villosa trabalis)*, Anthony's riversnail *(Athearnia anthonyi)*, Slender campeloma *(Campeloma decampi)*, Lacy elimia snail *(Elimia crenatella)*, round rocksnail *(Leptoxis ampla)*, plicate rocksnail *(Leptoxis plicata)*, Painted rocksnail *(Leptoxis taeniata)*, Flat pebblesnail *(Lepyrium showalteri)*, cylindrical lioplax snail *(Lioplax cyclostomaformis)*, armored snail *(Pyrgulopsis* (=*Marstonia pachyta)*, Tulotoma snail *(Tulotoma magnifica)*, painted snake coil forest snail *(Anguispira picta)*, royal mrstonia snail *(Pyrgulopsis ogmorhaphe)*, Nashville crayfish *(Orconectes shoupi)*.

The proposed activities would occur while conducting presence/absence surveys throughout the states of Alabama, Tennessee, Mississippi, Georgia, Florida, and Kentucky.

Dated: April 11, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–8401 Filed 4–26–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, May 23, 2005, from 8 a.m., to 5 p.m., local time. This will be a one day meeting.

ADDRESSES: The Advisory Board will meet at the Ramada Conference Center, 2900 North Monroe Street, Tallahassee, Florida, or call (850) 386–1027. Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business May 18, 2005. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Neal, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. Neal* at any time by calling the Federal Information Relay Service at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, May 23, 2005 (8 a.m.–5 p.m.)

8 a.m. Call to Order & Introductions:
8:15 a.m. Old Business:
Approval of March 2005 Minutes
BLM Action on March Recommendations
8:45 a.m. Program Updates:
Gathers
Adoptions
Facilities
Forest Service Update
Break (9:30 a.m.–9:45 a.m.)
9:45 a.m. Program Updates (continued):
Lunch (11:45 a.m.–1 p.m.)
1 p.m. New Business:
February 2005 Statistics
Break (2:30 p.m.–2:45 p.m.)
2:45 p.m. Board Recommendations
4 p.m. Public Comments
4:45 p.m. Recap/Summary/Next Meeting/Date/Site
5–6 p.m. Adjourn: Roundtable Discussion to Follow

The meeting site is accessible to individuals with disabilities. An

individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on May 23, 2005, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4 p.m., local time. Persons wishing to make statements should register with the BLM by noon on May 23, 2005, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Neal@blm.gov.* Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: April 21, 2005.

Edward W. Shepard,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 05–8358 Filed 4–26–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Oil and Gas Leasing: Fees, Rentals and Royalty

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification to suspend all royalty reductions granted under the heavy oil program and termination of the availability of further heavy oil royalty relief and request for comment.

SUMMARY: The Bureau of Land Management (BLM) is providing the six-month notification to suspend all royalty reductions for the production of heavy oil under the regulations at 43 CFR 3103.4–3(b)(6)(i) and of the termination of availability of further heavy oil relief. In addition, BLM is requesting comments on the conditions under which the suspension of the program should end.

DATES: This suspension of royalty reductions for the production of heavy oil is effective on November 1, 2005. You should submit your comments on the suspension conditions to BLM at the address below on or before May 27, 2005. BLM may or may not consider any comments received after the above date in the decision-making process.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

Personal or messenger delivery: 1620 L Street, NW., Suite 401, Washington, DC 20036.

Direct Internet: *http://www.blm.gov.nhp/news/regulatory/index.html.*

Internet E-mail: *WOComments@blm.gov.*

Federal eRulemaking Portal: *http://www/regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rudy Baier, Fluid Minerals Group, Bureau of Land Management, (202) 452–5024 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, except holidays, for assistance in reaching Mr. Baier.

SUPPLEMENTARY INFORMATION: Under 43 CFR 3103.4–3(b)(6)(i), BLM may suspend or terminate all heavy oil royalty reductions and terminate the availability of further heavy oil royalty relief ''upon 6 month's notice in the **Federal Register** when BLM determines that the average oil price has remained above $24 per barrel over a period of 6 consecutive months (based on the WTI Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year).'' The adjusted threshold for the third quarter of calendar year 2004 was $30.83 and for the fourth quarter $31.00.

Based on our analysis, The WTI Crude average oil prices exceeded the adjusted threshold at all times during the last 6 months. Therefore, as authorized by 43 CFR 3103.4–3, this serves as notice that BLM will suspend the heavy oil royalty reduction program effective on November 1, 2005.

Therefore, beginning on the effective date of the suspension, those properties currently receiving relief under section 3103.4–3 must pay royalty in accordance with the royalty rate in the lease or other BLM-approved royalty rate reductions, such as the royalty rate reductions available for certain stripper well properties under 43 CFR 3103.4–2.

The regulations do not include any provisions addressing what action BLM must take to remove the suspension and re-initiate the heavy oil royalty rate reduction program. BLM proposes that the suspension be lifted upon notice in the **Federal Register** after BLM determines that the average oil price has remained below $24 per barrel over a period of 6 consecutive months (based on the WTI Crude average posted prices and adjusted for inflation using the

implicit price deflator for gross national products with 1991 as the base year). BLM proposes that the effective date of the end of the suspension be the first day of the month more than 6 months after publication of the notice of re-initiation in the **Federal Register**.

In order to receive the benefits under the heavy oil royalty reduction program after the suspension ends, operators/payors must follow the regulations at 43 CFR 3103.4–3, including the requirement to notify BLM under § 3103.4–3(b).

BLM recognizes that the $24 per barrel trigger was instituted over 8 years ago and conditions since that time may have changed considerably. Therefore, BLM is requesting comments on the conditions under which a suspension should end. Specifically, BLM seeks comment on whether it should re-initiate relief sooner than 6 months after it publishes notice that the program is beginning again after 6 months of below-trigger prices. Please see the **ADDRESSES** section above for information on where to submit your comments.

Dated: March 18, 2005.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 05–8362 Filed 4–26–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 010063]

Public Land Order No. 7632; Partial Revocation of Public Land Order No. 2354 and Revocation of Secretarial Order Dated January 27, 1908; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Public Land Order and revokes a Secretarial Order in its entirety insofar as they affect approximately 1,339 acres of National Forest System lands withdrawn for administrative and public service sites, recreation areas, and roadside zones. This order opens the lands to such forms of disposition as authorized by law on National Forest System lands and to mining.

EFFECTIVE DATE: May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Marsha Fryer, Forest Service, Intermountain Region, 324–25th Street, Ogden, Utah 84401–2310, 801–625–5802.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that these lands no longer need to be withdrawn and has requested the revocations.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 2354, which withdrew National Forest System lands for administrative and public service sites, recreation areas, and roadside zones, is hereby revoked insofar as it affects the following described lands:

Fishlake National Forest

Salt Lake Meridian

Christiansen Spring Administrative Site

T. 25 S., R. 1 W.,
sec. 18, SW¼SW¼ lot 1, and NW¼NW¼ lot 2.

T. 25 S., R. 2 W.,
sec. 13, SE¼SE¼NE¼NE¼ and NE¼NE¼SE¼NE¼.

Forshea Mountain Administrative Site

T. 29 S., R. 2½ W.,
sec. 13, NW¼NW¼ and N½N½SW¼NW¼.

Lisonbee Spring Administrative Site

T. 21 S., R. 4 E.,
sec. 34, SW¼NW¼.

Meadow Creek Recreation Area

T. 22 S., R. 4 W.,
sec. 20, E½E½NE¼SW¼ and NW¼SE¼.

Meadow Gulch Administrative Site

T. 23 S., R. 3 E.,
sec. 14, SE¼SE¼;
sec. 23, NE¼NE¼.

Mountain Ranch Administrative Site

T. 22 S., R. 3 E.,
sec. 15, lots 1, 2, 3, and 4, and W½.

Musinia Administrative Site

T. 21 S., R. 3 E.,
sec. 4, SW¼SW¼.

Pioneer Administrative Site

T. 21 S., R. 3 W., partly unsurveyed,
sec. 1, W½SE¼;
sec. 12, NW¼NE¼.

Radford Administrative Site

T. 17 S., R. 3 W.,
sec. 8, E½NW¼ and W½NE¼.

Soldier Fork Administrative Site

T. 22 S., R. 1 E.,
sec. 4, NW¼SW¼.

Solitude Administrative Site

T. 22 S., R. 3 W.,
sec. 23, N½NW¼.

The areas described aggregate approximately 1,200 acres in Millard, Piute, and Sevier Counties.

2. The Secretarial Order dated January 27, 1908, which withdrew the following described National Forest System land for the Redview Administrative Site, is hereby revoked in its entirety:

Fishlake National Forest

Salt Lake Meridian

T. 23 S., R. 4 W., unsurveyed.

A tract of land containing approximately 139 acres in Sevier County.

3. At 10 a.m. on May 27, 2005, all of the lands described in this order shall be opened to such forms of disposition as authorized by law on National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 1, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 05–8363 Filed 4–26–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0092 and 1029–0107

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information under 30 CFR 745, State-Federal cooperative agreements; and 30 CFR 887, Subsidence Insurance Program Grants.

DATES: Comments on the proposed information collection must be received

by June 27, 2005 to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783 or via e-mail at the address listed above.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR 745, State-Federal cooperative agreements; and (2) 30 CFR 887, Subsidence Insurance Program Grants. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: State-Federal cooperative agreements—30 CFR 745.

OMB Control Number: 1029–0092.

Summary: 30 CFR 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in the Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation activities on Federal lands.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments that regulate coal operations.

Total Annual Responses: 8.

Total Annual Burden Hours: 335.

Total Annual Non-Wage Costs: $0.

Title: Subsidence Insurance Program Grants—30 CFR 887.

OMB Control Number: 1029–0107.

Summary: States and Indian tribes having an approved reclamation plan may establish, administer and operate self-sustaining State and Indian Tribe-administered programs to insure private property against damages caused by land subsidence resulting from underground mining. States and Indian tribes interested in requesting monies for their insurance programs would apply to the Director of OSM.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: States and Indian tribes with approved coal reclamation plans.

Total Annual Responses: 1.

Total Annual Burden Hours: 8

Total Annual Non-Wage Costs: $0.

Dated: April 21, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–8368 Filed 4–26–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Second Review)]

Petroleum Wax Candles From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year review.

EFFECTIVE DATE: April 21, 2005.

FOR FURTHER INFORMATION CONTACT: Vincent Honnold (202–205–3314), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On January 14, 2005, the Commission established a schedule for the conduct of the subject five-year review (70 FR 3224, January 21, 2005). The Commission hereby gives notice that it is revising the schedule for its final determination in the subject five-year review.

The activities of the Commission's schedule that are revised are as follows: the prehearing staff report will be placed in the nonpublic record and released to the parties on May 5, 2005; prehearing briefs are due May 16, 2005; requests to appear at the hearing are due May 17, 2005; the prehearing conference (if necessary) will be held on May 19, 2005; the hearing will be held on May 25, 2005; and posthearing briefs are due June 3, 2005.

For further information concerning this review investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This five-year review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: April 21, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–8361 Filed 4–26–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Alien's Change of Address Form: 33/BIA Board of Immigration Appeals, 33/IC Immigration Court.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 27, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact MaryBeth Keller, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Alien's Change of Address Form: 33/BIA Board of Immigration Appeals, 33/IC Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: Form EOIR 33/BIA, 33/IC. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: An individual appearing before the Immigration Court or the Board of Immigration Appeals. Other: None. Abstract: The information on the change of address form is used by the Immigration Courts and the Board of Immigration Appeals to determine where to send notices of the next administrative action or of any decisions in an alien's case.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 15,000 respondents will complete the form annually with an average of 3 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 750 total burden hours associated with this collection annually.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D. Street, NW, Washington, DC 20530.

Dated: April 21, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–8365 Filed 4–26–05; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act (WIA) Section 167; The National Farmworker Jobs Program (NFJP)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of formula allocations for the Program Year (PY) 2005 NFJP, request for comments.

SUMMARY: Under Section 182(d) of the WIA of 1998, ETA is publishing the PY 2005 allocations for the NFJP, authorized under Section 167 of the WIA. The allocations are distributed to the states by a formula that estimates, by state, the relative demand for NFJP services. The allocations in this notice apply to the PY beginning July 1, 2005.

DATES: Comments must be submitted on or before May 31, 2005.

ADDRESSES: Comments should be sent to Alina M. Walker, Chief, Division of Seasonal Farmworker Programs, Room S–4206, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, e-mail address: *walker.alina@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Alina M. Walker, Chief, Division of Seasonal Farmworker Programs, Room S–4206, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2706 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1999, ETA published a notice establishing new factors for the formula that allocates funds available for the NFJP in the **Federal Register** at 64 FR 27390. This **Federal Register** notice is available at the following Internet address: *http://www.doleta.gov/MSFW/pdf/allocationtable.pdf.*

The May 19, 1999, **Federal Register** may also be obtained by submitting a mail, e-mail or telephone request to Alina M. Walker, Chief, Division of Seasonal Farmworker Programs, Room S–4206, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, e-mail address: *walker.alina@dol.gov,* telephone number (202) 693–2706 (this is not a toll-free number).

The May 19, 1999, notice explained the purpose of the formula, *i.e.*, distributing funds geographically by state service area on the basis of each area's relative share of farmworkers who are eligible for enrollment in the NFJP. The data used to run the formula is comprised of a combination of data sets that were selected to yield the relative share distribution across states of eligible farmworkers. The combined-data set driven formula is substantially more relevant to the purpose of aligning the allocations with the eligible population than the allocations determined by the prior formula.

For PY 2005, the data factors used in the formula remain unchanged since they were first developed in 1999. However, the PY 2005 data sets used for determining each state's relative share of eligible farmworkers have been updated with more recent data available from the 2000 Census, the 2003 National Agricultural Workers Survey (NAWS), and the 2002 Census of Agriculture.

II. Limitations on Uses of Section 167 Funds

In appropriating the funds for PY 2005, Congress provided in the Consolidated Appropriations Act, 2005 (P.L. 108–447) $76,370,000 for carrying out Section 167 of the Workforce Investment Act of 1998, including $71,787,000 for state service area grants,

$4,583,000 for migrant and seasonal farmworker housing grants, and $504,000 for Section 167 training, technical assistance and related activities. Funds for migrant rest center activities are included in the $504,000 available for technical assistance and training.

Public Law 108–447 also includes a 0.80 percent government-wide across-the-board rescission. A total of $71,690,318 for formula grants is available for allocation as a result of applying this rescission.

III. PY 2005 Allocation Formula

The formula distribution for the $71,690,318 available for allocation in PY 2005 reflects the state-by-state relative share of eligible farmworkers as determined by the updated combined data sets described in the May 19, 1999, **Federal Register** notice. Additional ''hold-harmless'' and ''stop-loss''/''stop-gain'' adjustments to the formula were applied for the PY 2005 NFJP fund allocation. The ''hold-harmless'' adjustment provides that states would receive no less than 85 percent of their comparable 1998 allocation levels. This ''hold-harmless'' adjustment has been applied to the formula allocations in the last three years. The ''stop-loss''/''stop-gain'' adjustment is used for the first time this year and provides that states would receive no less than 75 percent or no more than 150 percent of their relative share of the total PY 2004 formula allocations to all States. Of the two minimums, states would receive the higher of the ''hold-harmless'' or the ''stop-loss'' amount (limited by the ''stop-gain'' if necessary).

To make these adjustments, each state's PY 2005 formula allocation calculation was first compared to a minimum amount equal to the higher of 85 percent of its PY 1998 dollar allocation or 90 percent of its relative share in PY 2004 multiplied by the PY 2005 total formula amount. For each state, if its minimum level allocation was higher than the amount indicated by the unadjusted formula allocation, the minimum level was assigned to that state. All such states' assigned minimum level allocations were added and these states, along with their assigned amounts, were removed from the remaining calculations.

For the remaining states whose unadjusted formula amounts were higher than their respective minimum levels, their formula amounts were added and the total was compared to the total amount of remaining funds. Because there were less funds remaining available, each remaining state's formula amount was reduced by the same proportion that the total remaining funds bore to the total remaining states' formula amounts. This reduced allocation amount for each state was again tested against its minimum comparison level and the above process was repeated until there were no remaining states being assigned their minimum level.

For the remaining states that were not assigned a minimum level, each state's reduced formula amount was then compared to a maximum amount equal to 150 percent of its relative share in PY 2004 multiplied by the PY 2005 total formula amount. For each state, if the maximum level allocation was lower than their adjusted formula allocation amount, the maximum level was assigned to that state. All such states' assigned maximum level allocations were added and these states, along with their assigned amounts, were removed from the remaining calculations.

For the remaining states, their adjusted formula amounts were added and the total was compared to the total amount of remaining funds. Because there were additional funds available for the remaining states, each remaining state's formula amount was increased by the same proportion that the total remaining funds bore to the total remaining states' formula amounts. This adjusted allocation amount for each state was again tested against its maximum comparison level and the above process was repeated until there were no remaining states being assigned their maximum level.

Each state's final allocation was either the assigned minimum or maximum level or the final proportionally adjusted formula amount.

IV. State Combinations

We anticipate a single plan of service for operating the PY 2005 NFJP in the jurisdiction comprised of Delaware and Maryland and the jurisdiction comprised of Rhode Island and Connecticut.

V. PY 2005 Allocations

The ''Allocation Table'' provides the allocations for the NFJP in PY 2005. NFJP grantees and other interested organizations should use these figures in preparing proposals in response to the PY 2005 Solicitation for Grant Applications (SGA) for the National Farmworker Jobs Program (NFJP).

Signed at Washington, DC, this 22nd day of April 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

BILLING CODE 4510–30–P

U. S. Department of Labor
Employment and Training Administration

National Farmworker Jobs Program
PY 2005 Allocations to States

State	PY 2005
Total	**$71,212,704**
Alabama	762,568
Alaska	0
Arizona	2,053,518
Arkansas	1,102,412
California	18,378,633
Colorado	962,915
Connecticut	339,347
Delaware	100,584
District of Columbia	0
Florida	3,936,703
Georgia	1,454,873
Hawaii	318,233
Idaho	966,734
Illinois	1,211,937
Indiana	813,679
Iowa	1,117,235
Kansas	842,526
Kentucky	1,149,721
Louisiana	877,016
Maine	278,287
Maryland	278,526
Massachusetts	310,093
Michigan	1,347,398
Minnesota	1,188,297
Mississippi	1,231,687
Missouri	930,345
Montana	567,111
Nebraska	925,482
Nevada	170,676
New Hampshire	95,710
New Jersey	498,300
New Mexico	911,635
New York	1,573,067
North Carolina	2,555,103
North Dakota	434,778
Ohio	1,006,422
Oklahoma	910,857
Oregon	1,898,820
Pennsylvania	1,105,665
Puerto Rico	2,944,978
Rhode Island	29,688
South Carolina	918,090
South Dakota	588,939
Tennessee	814,129
Texas	5,431,487
Utah	278,493
Vermont	181,164
Virginia	880,975
Washington	2,975,532
West Virginia	186,426
Wisconsin	1,204,286
Wyoming	171,624

[FR Doc. 05–8410 Filed 4–26–05; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability for Program Year (PY) 2003 Performance

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, in collaboration with the Department of Education, announces that 19 states are eligible to apply for Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*) incentive awards under the WIA Regulations.

DATES: The 19 eligible states must submit their applications for incentive funding to the Department of Labor by June 13, 2005.

ADDRESSES: Submit applications to the Employment and Training Administration, Office of Performance and Technology, 200 Constitution Avenue NW., Room S–5206, Washington, DC 20210, Attention: Esther R. Johnson, 202–693–3031 (phone), 202–693–3490 (fax), e-mail: *johnson.esther@dol.gov.* Please be advised that mail delivery in the Washington, DC area has been inconsistent because of concerns about anthrax contamination. States are encouraged to submit applications via e-mail.

FOR FURTHER INFORMATION CONTACT: The Office of Performance and Technology, Karen Staha (phone: 202–693–3031 or e-mail: *staha.karen@dol.gov*). (This is not a toll-free number.) Information may also be found at the Web site: *http://www.doleta.gov/performance.*

SUPPLEMENTARY INFORMATION: 19 states (see list below) have qualified to receive a share of the $16.6 million available for incentive grant awards under WIA section 503. These funds, which were contributed by the Department of Education from appropriations for the Adult Education and Family Literacy Act and the Carl D. Perkins Vocational and Technical Education Act, are available to the states through June 30, 2007, to support innovative workforce development and education activities that are authorized under title I (Workforce Investment Systems) or title II (the Adult Education and Family Literacy Act (AEFLA)) of WIA, or under the Perkins Act (Pub. L. 105–332, 20 U.S.C. 2301 *et seq.*). In order to qualify for a grant award, a state must have exceeded performance levels, agreed to by the Secretaries, Governor, and State Education Officer, for outcomes in WIA title I, adult education (AEFLA), and vocational education (Perkins Act) programs. The goals included placement after training, retention in employment, and improvement in literacy levels, among other measures. After review of the performance data submitted by states to the Department of Labor and to the Department of Education, each Department determined which states would qualify for incentives for its program(s). (*See* below for a list of the states that qualified under all three Acts.) These lists of eligible states were compared, and states that qualified under all three programs are eligible to receive an incentive grant award. The amount that each state is eligible to receive was determined by the Department of Labor and the Department of Education and is based on WIA section 503(c) (20 U.S.C. 9273(c)), and is proportional to the total funding received by these states for the three Acts.

The states eligible to apply for incentive grant awards, and the amounts they are eligible to receive, are listed below:

State	Amount of award
1. Alabama	$912,153
2. Colorado	825,020
3. Delaware	776,272
4. Georgia	944,675
5. Iowa	803,173
6. Indiana	879,629
7. Louisiana	966,800
8. Maryland	870,909
9. Michigan	1,024,160
10. Minnesota	852,449
11. Missouri	891,441
12. North Dakota	772,770
13. Nebraska	783,830
14. Nevada	797,987
15. Oregon	874,471
16. Pennsylvania	1,076,445
17. South Carolina	867,055
18. South Dakota	773,309
19. Tennessee	912,500

These eligible states must submit their applications for incentive funding to the Department of Labor by June 13, 2005. As set forth in the provisions of WIA section 503(b)(2) (20 U.S.C. 9273(b)(2)), 20 CFR 666.220(b) and Training and Employment Guidance Letter (TEGL) No. 20–01, Change 3, Application Process for Workforce Investment Act (WIA) Section 503 Incentive Grants, Program Year 2003 Performance, which is available at *http://www.doleta.gov/performance,* the application must include assurances that:

A. The legislature of the state was consulted with respect to the development of the application.

B. The application was approved by the Governor, the eligible agency for adult education (as defined in section 203(4) of WIA (20 U.S.C. 9202(4))), and the state agency responsible for vocational and technical education programs (as defined in section 3(9) of Perkins III (20 U.S.C. 2302(9)).

C. The state and the eligible agency, as appropriate, exceeded the state adjusted levels of performance for WIA title I, the state adjusted levels of performance for the AEFLA, and the performance levels established for Perkins Act programs.

In addition, states are requested to provide a description of the planned use of incentive grants as part of the application process, to ensure that the state's planned activities are innovative and are otherwise authorized under the WIA title I, the AEFLA, and/or the Perkins Act as amended, as required by WIA section 503(a). TEGL No. 20–01, Change 3 provides the specific application process that states must follow to apply for these funds.

The applications may take the form of a letter from the Governor, or designee, to the Assistant Secretary of Labor, Emily Stover DeRocco, Attention: Esther R. Johnson, 200 Constitution Avenue NW., Room S–5206, Washington, DC 20210. In order to expedite the application process, states are encouraged to submit their applications electronically to Karen Staha at staha.karen@dol.gov.

The states will receive their incentive awards by June 30, 2005.

Signed at Washington, DC, this 21st day of April, 2005.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

PY2003 PERFORMANCE QUALIFIES STATE FOR INCENTIVES

State	WIA	AEFLA	Perkins Act	Eligible for incentive
1. Alaska			X	
2. Alabama	X	X	X	X
3. Arkansas		X	X	
4. Arizona		X	X	
5. California		X	X	
6. Colorado	X	X	X	X
7. Connecticut		X	X	
8. District of Columbia		X	X	
9. Delaware	X	X	X	X
10. Florida		X	X	
11. Georgia	X	X	X	X
12. Hawaii		X		
13. Iowa	X	X	X	X
14. Idaho			X	
15. Illinois		X	X	
16. Indiana	X	X	X	X
17. Kansas		X	X	
18. Kentucky	X	X		
19. Louisiana	X	X	X	X
20. Massachusetts		X	X	
21. Maryland	X	X	X	X
22. Maine		X	X	
23. Michigan	X	X	X	X
24. Minnesota	X	X	X	X
25. Missouri	X	X	X	X
26. Mississippi	X		X	
27. Montana			X	
28. North Carolina		X	X	
29. North Dakota	X	X	X	X
30. Nebraska	X	X	X	X
31. New Hampshire		X	X	
32. New Jersey			X	
33. New Mexico	X		X	
34. Nevada	X	X	X	X
35. New York	X		X	
36. Ohio		X	X	
37. Oklahoma		X	X	
38. Oregon	X	X	X	X
39. Pennsylvania	X	X	X	X
40. Puerto Rico		X		
41. Rhode Island		X	X	
42. South Carolina	X	X	X	X
43. South Dakota	X	X	X	X
44. Tennessee	X	X	X	X
45. Texas		X		
46. Utah			X	
47. Virginia		X	X	
48. Vermont		X	X	
49. Washington	X		X	
50. Wisconsin		X	X	
51. West Virginia		X		
52. Wyoming		X	X	

[FR Doc. 05–8449 Filed 4–26–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DEPARTMENT OF ENERGY

Office of the Environment, Safety and Health

Notice; Addendum to the Memorandum of Understanding: To Formalize the Working Relationship Between the Department of Energy and the Department of Labor (August 28, 1992)

AGENCIES: The Department of Labor, Occupational Safety and Health Administration (OSHA); Department of Energy, Office of the Environment, Safety and Health.

ACTION: Addendum to Memorandum of Understanding between the Department of Labor and the Department of Energy: The construction and operation by the University of Chicago of a Regional Biocontainment Laboratory located at Argonne National Laboratory; transfer of worker safety and health authority from the Department of Energy (DOE) to the Occupational Safety and Health Administration (OSHA) for a portion of land that has been leased to the private sector for construction and operation of a Regional Biocontainment Laboratory at Argonne National Laboratory, a DOE Government-Owned and Contractor-Operated (GOCO) facility.

SUMMARY: This notice is an addendum to the 1992 interagency Memorandum of Understanding (MOU) between the U.S. Department of Labor and the U.S. Department of Energy. That MOU states that DOE has exclusive authority over the occupational safety and health of contractor employees at DOE GOCOs. In addition, the MOU between the departments dated July 25, 2000 on safety and health enforcement at privatized facilities and operations provides that OSHA has regulatory authority over occupational safety and health at certain privatized facilities and operations on DOE land leased to private enterprises. This action is taken in accordance with the July 25, 2000 MOU, which establishes specific interagency procedures for the transfer of occupational safety and health coverage for such privatized facilities and operations from DOE to OSHA. The MOUs may be found on the internet via the OSHA Web page *www.osha.gov* under the ''D'' for Department of Energy Transition Activities.

EFFECTIVE DATE: May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Trese Louie, Office of Technical Programs and Coordination Activities, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3653, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On August 10, 1992, the U.S. Department of Energy (DOE) and the Occupational Safety and Health Administration of the Department of Labor (OSHA) entered into a Memorandum of Understanding, delineating regulatory authority over the occupational safety and health of contract employees at DOE Government-Owned or Leased Contractor-Operated (GOCO) facilities. In general, the memorandum of understanding recognizes that DOE exercises statutory authority under section 161(f) of the Atomic Energy Act of 1954, as amended, [42 U.S.C. 2201(f)], relating to the occupational safety and health of private-sector employees at these facilities.

Section 4(b)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653(b)(1), exempts from OSHA authority working conditions with respect to which other federal agencies have exercised statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. The 1992 Memorandum of Understanding acknowledges DOE's extensive regulation of contractor health and safety through safety orders, which require contractor compliance with all OSHA standards as well as additional requirements prescribed by DOE, and concludes with an agreement by the agencies that the provisions of the Occupational Safety and Health Act will not apply to GOCO sites for which DOE has exercised its authority to regulate occupational safety and health under the Atomic Energy Act.

In light of DOE's policy emphasis on privatization activities, OSHA and DOE entered into a second Memorandum of Understanding on July 25, 2000; that establishes interagency procedures to address regulatory authority for occupational safety and health at specified privatized facilities and operations on DOE sites. The 2000 Memorandum of Understanding specifically covers facilities and operations on lands that have been leased to private enterprises, which are not conducting activities for or on behalf of DOE and where there is no likelihood that any employee exposure to radiation from DOE sources would be 25 millirems per year (mrem/yr) or more.

On September 30, 2003, the National Institute of Allergy and Infectious Diseases (NIAID), one of the National Institutes of Health (NIH), in the U.S. Department of Health and Human Services, announced that it will fund nine regional biocontainment laboratories (RBL) for the study of organisms important to national biodefense efforts as well as organisms causing emerging infectious diseases. The Ricketts Regional Biocontainment Laboratory was proposed in early February 2003 by the University of Chicago in support of a Midwestern Regional Center of Excellence (RCE), a consortium of prominent medical research organizations in the upper Midwest. In September 2003, the U.S. Department of Health and Human Services announced a grant of $35 million over five years to support the center.

The Ricketts Regional Biocontainment Lab will be a biosafety level 3 (BSL–3) laboratory designed to safely conduct research on microbes that can cause potentially lethal diseases. It will be located at a site leased from DOE at Argonne National Laboratory—East, 25 miles southwest of Chicago, Illinois. Argonne is operated by the University of Chicago, a private university, for the United States Department of Energy.

In accordance with the July 25, 2000 MOU, on November 24, 2003, DOE notified OSHA of its intent to lease land to the University of Chicago for the purpose of constructing and operating a Regional Biocontainment Laboratory at the Argonne National Laboratory-East for the National Institutes of Health. The letter stated that the laboratory would be operated by the University of Chicago, a private institution, to conduct research for NIH (as opposed to DOE). It also stated that the radiological dose to workers at the RBL would be much less than 25 mrems/year from all DOE sources. In addition, the University of Chicago will own and operate the RBL and DOE will not have a contractual relationship with the University relating to that facility. DOE will not have statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health at the RBL. Thus, as the letter stated, the section 4(b)(1) exemption to the OSH Act would not apply to the RBL. Therefore, the letter requested, in accordance with the 2000 MOU, that OSHA confirm that it will regulate occupational safety and health at the RBL. On February 10, 2004, OSHA responded to this letter, stating that it would review this request.

Accordingly, after reviewing pertinent information OSHA, in a letter to DOE dated November 17, 2004, agreed to accept regulatory authority for occupational safety and health over this site. This **Federal Register** Notice is published as an addendum to the August 28, 1992 Memorandum of Understanding between the U.S. Department of Labor and U.S. Department of Energy. Federal OSHA has regulatory authority over occupational safety and health at privatized facilities leased to the University of Chicago for the construction and operation of a Regional Biocontainment Laboratory at DOE's Government-Owned and Contractor-Operated (GOCO) Argonne National Laboratory.

Dated: March 28, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor for Occupational Safety and Health, Department of Labor.

Dated: April 6, 2005.

C. Russell H. Shearer,

Principal Deputy Assistant Secretary for Environment, Safety and Health, Department of Energy.

[FR Doc. 05–8370 Filed 4–26–05; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Extension of Comment Period for An Environmental Assessment of a Marine Geophysical Survey by the Coast Guard Cutter Healy Across the Arctic Ocean, August-September 2005

AGENCY: National Science Foundation.

ACTION: Notice of extension of comment period.

SUMMARY: The National Science Foundation is extending the comment period for the Environmental Assessment of a Marine Geophysical Survey by the Coast Guard Cutter *Healy* Across the Arctic Ocean, August-September 2005, published on April 11, 2005 (70 FR 18431). The environmental assessment describes a marine geophysical survey across the Arctic Ocean. This action extends the comment period for 15 days.

DATES: Comments on the preliminary plan will be accepted through May 26, 2005.

ADDRESSES: Comments should be submitted to Dr. Polly A. Penhale, National Science Foundation, Office of Polar Programs, 4201 Wilson Blvd., Suite 755, Arlington, VA 22230. Telephone: (703) 292–8033, Copies of the draft Environmental Assessment are available upon request from Dr. Penhale, or at the Web site: *http://www.nsf.gov/od/opp/arctic/arc_envir/healy_ea.pdf.*

SUPPLEMENTARY INFORMATION: On April 11, 2005 (70 FR 18432), NSF published a notice of availability of an Environmental Assessment of a Marine Geophysical Survey by the Coast Guard Cutter *Healy* Across the Arctic Ocean, August-September 2005.

The original comment was May 11, 2005. A stakeholder group will be meeting shortly before this deadline. This action extends the comment period for 15 days to allow stakeholders adequate time to review the environmental assessment and prepare comments.

Nadene Kennedy,

Permit Officer, Office of Polar Programs, National Science Foundation.

[FR Doc. 05–8399 Filed 4–26–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Meeting

Agency Holding Meeting: National Science Foundation, National Science Board, *ad hoc* Committee on Nominating for NSB Elections.

Date and Time: May 4, 2005, 11:30 a.m.–12:30 p.m.

Place: National Science Foundation, Room 1225, 4201 Wilson Boulevard, Arlington, VA 22230.

Status: This meeting will be closed to the public.

Agenda: Discussion of candidates for two vacancies on Executive Committee.

For information, contact: Dr. Michael P. Crosby, Executive Officer and NSB Office Director. (703) 292–7000. *http://www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 05–8391 Filed 4–26–05; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 36—Licenses and Radiation Safety Requirements for Irradiators.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. It is estimated that there are approximately 3 NRC and 10 Agreement State reports submitted annually.

5. *Who will be required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

6. *An estimate of the number of responses:* 108 {13 for reporting (3 NRC licensees and 10 Agreement States) 95 for recordkeeping (19 NRC licensees and 76 Agreement States)}

7. *The estimated number of annual respondents:* 95 (19 NRC licensees and 76 Agreement State licensees).

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 44,356 (8,872 hours for NRC licensees [8,712 recordkeeping + 160 reporting] and 35,484 hours for Agreement State licensees [34,846 recordkeeping + 638 reporting]), or 467 hours per licensee.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 27, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John Asalone, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 20th day of April 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer Office of Information Services.

[FR Doc. E5–1983 Filed 4–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 536, ''Operator Licensing Examination Data.''

3. *The form number if applicable:* NRC Form 536.

4. *How often the collection is required:* Annually.

5. *Who will be required or asked to report:* All holders of operator licenses or construction permits for nuclear power reactors.

6. *An estimate of the number of annual responses:* 80.

7. *The estimated number of annual respondents:* 80.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 80.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC is requesting renewal of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for operator licensing initial examinations; (2) the estimated dates of the examinations; (3) if the examination will be facility developed or NRC developed, and (4) the estimated number of individuals that will participate in the Generic Fundamentals Examination (GFE) for that calendar year. Except for the GFE, this information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear industry.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 27, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John A. Asalone, Office of Information and Regulatory Affairs (3150–0131), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 21st day of April, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–1984 Filed 4–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

DATES: Weeks of April 25, May 2, 9, 16, 23, 30, 2005.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 25, 2005

Tuesday, April 26, 2005

9:30 a.m.

Briefing on Grid Stability and Offsite Power Issues (Public Meeting). (Contact: John Lamb, (301) 415–1446).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

Week of May 2, 2005—Tentative

There are no meetings scheduled for the Week of May 2, 2005.

Week of May 9, 2005—Tentative

Wednesday, May 11, 2005

10:30 a.m.

All Employees Meeting (Public Meeting).

1:30 p.m.

All Employees Meeting (Public Meeting).

Week of May 16, 2005—Tentative

There are no meetings scheduled for the Week of May 16, 2005.

Week of May 23, 2005—Tentative

Monday, May 23, 2005

1:30 p.m.

Discussion of Security Issues (Closed—Ex. 1).

Wednesday, May 25, 2005

9:30 a.m.

Briefing on Results of the Agency Action Review Meeting (Public Meeting). (Contact: Lois James, (301) 415–1112).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

1:30 p.m.

Briefing on Threat Environment Assessment (Closed—Ex.1).

Week of May 30, 2005—Tentative

Wednesday, June 1, 2005

9:30 a.m.

Discussion of Security Issues (Closed—Ex. 1).

Thursday, June 2, 2005

9:30 a.m.

Briefing on Office of International Programs (OIP) Programs, Performance, and Plans (Public Meeting). (Contact: Margie Doane, (301) 415–2344).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

1:30 p.m.

Discussion of Management Issues (Closed—Ex. 2&9).

*The schedule for Commission meetings if subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

ADDITIONAL INFORMATION: ''Discussion of Security Issues (Closed—Ex. 1),'' originally scheduled for Thursday, April 21, 2005 at 1:30 p.m. was not held.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: April 21, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–8493 Filed 4–25–05; 9:23 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Customized Postage

AGENCY: Postal Service.

ACTION: Notice of authorization of market test for Customized Postage.

SUMMARY: The Postal Service(™) provides notice of its intention to resume testing of the concept of Customized Postage for a period of one year commencing 20 calendar days from the date of publication of this notice in the **Federal Register**. PC Postage(®) is a method of providing evidence of pre-payment of United States postage using a personal computer and printer and Internet access to an authorized PC Postage provider infrastructure approved by the Postal Service under 39 CFR part 501. Like postage meters, PC Postage services facilitate customer access to postage payment and use of the mail. PC Postage and postage meter products that print digitally generated barcode indicia contain human readable and machine readable elements that facilitate mail processing and counterfeit detection due to identification enabling characteristics. The typical indicia design consists of two elements: a postage block and a distinctly separate block typically called an ''ad plate.'' The historical use of ad plates consists of printed advertising messages authorized, enabled, and controlled by a Postal Service approved postage meter or PC Postage provider. Customized Postage differs from conventional PC Postage in two respects: First, it utilizes the ''ad plate'' area to print a digital, graphic image. The image may be one selected from a ''library'' of images provided by the authorized PC Postage provider or a customer supplied image that meets acceptance criteria established by the PC Postage provider; and, second, instead of the customer printing the selected image on a personal computer the images are printed by the Customized Postage provider under controlled conditions and the finished product is mailed to the customer. With respect to postage meter ad plates the Postal Service will require evaluation and approval of any process established by an authorized provider which results in the printing of a graphic ''ad plate.''

DATES: This notice is effective April 27, 2005.

FOR FURTHER INFORMATION CONTACT: Manager of Postage Technology Management, at 703–292–3691 or by fax at 703–292–4073.

SUPPLEMENTARY INFORMATION: In July 2004, the Postal Service authorized a limited market test of the first exemplar of Customized Postage. The test was concluded on September 30, 2004.

The Postal Service is interested in obtaining additional knowledge regarding the market for Customized Postage, and, therefore, is authorizing an additional market test of Customized Postage concepts. By this notice, the Postal Service invites interested parties to submit proposed concepts for consideration.

While each concept will be evaluated on its own merits, particular conditions may be required and agreed to by the Postal Service and the Customized Postage provider regarding the testing of that concept. The following conditions will be applied in common to all concepts:

1. The provider must be an authorized PC Postage provider, authorized postage meter manufacturer or distributor, or a company affiliated with an authorized postage provider under conditions respecting postage revenue security approved by the Postal Service in accordance with 39 CFR part 501.1 and subject to all procedures and regulations set forth throughout 39 CFR Chapter 501.

2. The Customized Postage indicia and other printed matter must meet all Postal Service requirements respecting placement on a mail piece, readability, avoidance of interference with and facilitation of mail processing, and identification of fraudulent indicia, as well as all Postal Service regulations pertaining to PC Postage products and services.

3. The provider must maintain an image control process which prevents the distribution of images that could harm the public image of the Postal Service in accordance with 39 CFR 501.6(g) and 501.23(d) and any subsequent incorporation of requirements specific to the evolving concept of Customized Postage.

4. Images which consist of notices or advertisements may not be included in Customized Postage produced during the test.

5. The test will be limited to full rate First-Class Mail®, Priority Mail® and Express Mail® services only.

6. The provider must agree that it has obtained all intellectual property licenses necessary to provide the approved service and that it will reimburse the Postal Service for any costs and damages the Postal Service may incur as a result of the provider's failure to honor this representation.

7. The provider must agree that the Postal Service has not exercised 28 U.S.C. 1498 with respect to the approved Customized Postage product.

8. The provider must design its Customized Postage indicia in a manner approved by the Postal Service, which reduces the likelihood that the public will be misled into believing that the product image originated with the Postal Service.

9. The Postal Service may suspend or cancel without prior notice and without liability for any costs incurred or losses sustained by a provider or customer, the approval of any customer as a test participant, or the Customized Postage test itself, in the event there is sufficient cause to believe that the test presents unacceptable risk to Postal Service revenues, degradation of the ability of the Postal Service to process or deliver mail produced by the test participants, an assessment that continuation of the test may expose the Postal Service or its customers to legal liability, or an assessment that continuation of the test will cause public or political embarrassment or harm to the Postal Service in any way.

10. The Postal Service will require approved providers of Customized Postage to pay a fee to defray the costs of the Postal Service in testing and evaluating Customized Postage.

11. Additional conditions and requirements may be set forth in individual product test approval letters.

Persons interested in submitting proposed Customized PC Postage concepts should contact: Manager, Postage Technology Management, U.S. Postal Service, 1735 North Lynn Street, Room 5011, Arlington, VA 22209–6030; (703) 292–3590 (Telephone); (703) 292–4073 (Fax); *ptm@USPS.gov*.

Neva Watson,

Attorney, Legislative.

[FR Doc. 05–8487 Filed 4–26–05; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26836; File No. 812–13054]

New England Life Insurance Co., et al., Notice of Application

April 21, 2005.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order pursuant to Sections 11(a) of the Investment Company Act of 1940 (the ''Act'').

Applicants: New England Life Insurance Company (''NELICO''), New England Variable Life Separate Account (the ''Variable Account''), and New England Securities Corporation (''NES'')

Summary of the Application: Applicants request an order pursuant to Section 11(a) of the Act approving the terms of the following proposed offer of exchange of variable life insurance contracts offered by NELICO and made available through the Variable Account: outstanding scheduled premium variable life insurance contracts (''Zenith Life Contract,'' ''Zenith Life Plus Contract,'' ''Zenith Life Plus II Contract,'' ''Zenith Life Executive 65 Contract,'' and ''Zenith Variable Whole Life Contract'' and, collectively, the ''Scheduled Premium Contracts'') for the Zenith Flexible Life 2001 contract (the ''Zenith 2001 Contract'').

Filing Date: The application was filed on December 22, 2003 and amended and restated on April 21, 2005.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 12, 2005, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Marie C. Swift, Esq., New England Life Insurance Company, 501 Boylston Street, Boston, MA 02116. Copies to: Stephen E. Roth, Esq. and Mary E. Thornton, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The application is available for a fee from the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 551–8090).

Applicants' Representations

1. NELICO is a stock life insurance company organized under the laws of Delaware in 1980 as New England Variable Life Insurance Company. New England Variable Life Insurance Company was a wholly owned subsidiary of New England Mutual Life Insurance Company. On August 30, 1996, New England Mutual Life Insurance Company merged into Metropolitan Life Insurance Company (''MetLife''), a life insurance company with principal offices in New York. MetLife is a wholly owned subsidiary of MetLife, Inc., a publicly traded company. Thereafter, MetLife became the parent of New England Variable Life Insurance Company, and the latter changed its name to New England Life Insurance Company and changed its domicile from the State of Delaware to the Commonwealth of Massachusetts. NELICO is authorized to operate in all states and the District of Columbia.

2. NELICO established the Variable Account on January 31, 1983, under Delaware law. When NELICO changed its domicile to Massachusetts on August 30, 1996, the Variable Account became subject to Massachusetts law. The Variable Account is registered under the Act as a unit investment trust, and is a ''separate account'' as that term is defined in Section 2(a)(37) of the Act. NELICO is the legal owner of the assets in the Variable Account. The obligations to contract owners and beneficiaries arising under the contracts are general corporate obligations of NELICO, and the general assets of NELICO support the contracts. The assets of the Variable Account equal to its reserves and other contract liabilities are not available to meet the claims of NELICO's general creditors, but are held and applied exclusively to the benefit of holders of those variable life insurance contracts funded through the Variable Account. The investment performance of the Variable Account is independent of both the investment performance of the general account of NELICO and of any other separate account that NELICO has established or may establish in the future.

3. NES is registered with the Commission as a broker-dealer, and is a member of the National Association of Securities Dealers, Inc. NES serves as principal underwriter for the Scheduled Premium Contracts and the Zenith 2001 Contracts. NES is an indirect, wholly owned subsidiary of NELICO.

General Description of Zenith Life 2001 Contracts

4. The Zenith 2001 Contracts are flexible premium variable life insurance contracts offered pursuant to a registration statement under the Securities Act of 1933 (''1933 Act'') (File No. 333–103193). The Zenith 2001 Contracts are available for sale to

individuals, trusts, and business entities (''non-pension contracts'') as well as for sale to qualified pension plans (''pension contracts'').

5. With certain restrictions, a Zenith 2001 Contract owner may make premium payments in an amount and based on a plan or schedule that he or she determines. Such planned premiums may be paid on an annual, semi-annual, quarterly, or monthly schedule. A Zenith 2001 Contract owner may skip planned premium payments or make additional payments. Additional payments may be subject to underwriting. No payment may be less than $25 ($10 for premium payments made under certain monthly payment arrangements).

6. The Variable Account consists of several subaccounts, each of which invests exclusively in a designated portfolio of one of the following underlying funds: Metropolitan Series Fund, Inc.; Met Investors Series Trust; Fidelity Variable Insurance Products Fund; Fidelity Variable Insurance Products Fund II; and American Funds Insurance Series (collectively, the ''Underlying Funds'').

7. Subject to certain restrictions, including restrictions on ''market timing'' transfers, a Zenith 2001 Contract owner may transfer cash value between subaccounts and between subaccounts and the fixed account, although special limits apply to transfers from the fixed account. NELICO reserves the right to limit transfers to 4 per contract year (12 per contract year in New York), and to impose a processing charge of $25 for each transfer in excess of 12 per contract year.

8. A contract owner may surrender the Zenith 2001 Contract at any time while the insured is living for the contract's net cash value, *i.e.*, cash value minus any contract loan and accrued interest thereon and any applicable surrender charge. A partial surrender reduces the death benefit and may necessitate a reduction of the face amount to the extent necessary to prevent the amount at risk under the contract from increasing. A partial surrender also may reduce rider benefits.

9. A contract owner may borrow from the cash value in the contract. The maximum amount a contract owner may borrow from cash value is an amount equal to: (i) 90% (more if required by state law) of the ''projected cash value'' of the contract minus (ii) the surrender charge on the next planned premium due date or, if greater, on the date the loan is made, minus (iii) loan interest to the next loan interest date. (The ''projected cash value'' is the cash value projected to the next contract anniversary or, if earlier, to the next planned premium due date, at a 4% rate and using current contract charges.) The loan value available is reduced by any outstanding loan plus interest charged on contract loans. A contract loan reduces the contract's cash value in the subaccounts by the amount of the loan. Unless a contract owner requests otherwise, NELICO attributes contract loans to the subaccounts of the Variable Account and to the fixed account in proportion to the cash value in each.

10. Two death benefit options are available under the Zenith 2001 Contract:

- Option 1 (Face Amount)—a level death benefit that equals the face amount of the contract; or
- Option 2 (Face Amount plus Cash Value)—a variable death benefit that equals the face amount of the contract plus the cash value of the contract.

11. NELICO deducts a sales charge, a premium tax charge, and a federal tax charge from premium payments before allocating the remaining amount to the investment options available under the Zenith 2001 Contract according to instructions from the contract owner. The maximum sales charge is four percent (three percent for certain pension-owned or business-owned Zenith 2001 Contracts) of premium. NELICO deducts a flat two and a half percent premium tax charge from each premium paid. NELICO also deducts one percent from each premium payment to cover its Federal income tax liability related to the premium payments it receives.

12. NELICO will deduct a surrender charge from cash value if, during the first eleven contract years or during the first eleven years following an increase in face amount, a contract owner surrenders his or her contract, reduces the face amount, makes a partial surrender that reduces the face amount, or the contract lapses. The surrender charge is comprised of a deferred sales charge and a deferred administrative charge. The deferred sales charge is a percentage of target premium that increases from 55% in the first contract year to 72% in contract years two through five, and then declines ratably on a monthly basis to 0% in the last month of the eleventh policy year (or the eleventh year following an increase in face amount). The deferred administrative charge is $2.50 per $1,000 of base contract face amount in the first contract year and then declines ratably on a monthly basis to $0 in the last month of the eleventh policy year (or the eleventh year following an increase in face amount). In the event of a face amount reduction or a partial surrender that results in a face amount reduction, NELICO will deduct the surrender charge applicable to the remaining cash value in an amount proportional to the amount of the face amount surrendered.

13. Each month, NELICO deducts: a policy charge ($15 per month during the first contract year and no more than $7 per month thereafter); an administrative charge of $.08 per $1,000 of base contract face amount in the first contract year and no more than $.04 per $1,000 of base contract face amount (not to exceed $60 per month) thereafter; monthly cost of insurance charges (the amount at risk under the contract—*i.e.*, the amount by which the death benefit, discounted monthly, exceeds the cash value—multiplied by the cost of insurance rate for the contract for that month); and charges for additional benefits and services (*e.g.*, for riders).

14. NELICO assesses a charge to cover the mortality and expense risks it assumes in issuing the Zenith 2001 Contracts. The charge is imposed daily, at an annual rate not to exceed 0.50% of the assets in the subaccounts of the Variable Account.

15. In addition, there are daily charges against the Underlying Fund assets for investment advisory services and operating expenses. These charges are reflected in the net asset values of the Underlying Fund shares purchased by the Variable Account subaccounts. For the fiscal year ended December 31, 2004, those Underlying Fund operating expenses ranged from 0.30% to 1.15% (before contractual fee waivers and expense reimbursements).

16. The death benefit or cash value proceeds of a Zenith 2001 Contract can be paid in a lump sum or under one of the payment options available under the contract. A contract owner may select a combination of payment options. The available payment options are fixed benefit options only, and are not affected by the investment experience of the Variable Account. NELICO must consent to, and may change the payment interval to increase each payment, if installments would be less than $20.

17. Several benefits may be added to the Zenith 2001 Contract by rider. These additional benefits usually require an additional charge as part of the monthly deduction from cash value. Not all riders are available to all Zenith 2001 Contract owners, and restrictions on rider coverage may apply in some states. NELICO may make other riders available in the future. These additional benefits include: Level Term Insurance

Rider (providing term insurance terminating at age 100); Temporary Term Insurance Rider (providing coverage from the date coverage is approved until the contract date); Children's Insurance Rider (providing term insurance on the lives of children of the insured); Waiver of Monthly Deduction Rider (waiving monthly deductions on the disability of the insured); Change to a New Insured Rider (allowing for the substitution of the insured); and Exchange to Term Insurance Endorsement (allows for the conversion of the policy to term insurance). NELICO does not intend to make the Exchange to Term Endorsement available under Zenith 2001 Contracts issued pursuant to the exchange offer, hereinafter ''Exchanged Zenith 2001 Contracts'').

General Descriptions of the Scheduled Premium Contracts

18. Each of the Scheduled Premium Contracts is a scheduled premium variable life insurance policy offered pursuant to a registration statement under the 1933 Act:

- Zenith Life Contract—File No. 2–82838.
- Zenith Life Plus Contract—File No. 33–19540.
- Zenith Life Plus II Contract—File No. 33–52050.
- Zenith Life Executive 65 Contract—File No. 33–64170.
- Zenith Variable Whole Life Contract—File No. 333–21767.

NELICO no longer sells new Scheduled Premium Contracts.

19. A Scheduled Premium Contract owner may make premium payments on due dates he or she selects during the lifetime of the insured for the period specified in the contract. The contract owner selects the frequency of premium payments—quarterly, semi-annually, annually, or according to another schedule agreed upon with NELICO. A contract owner may change the premium payment schedule. Failure to pay a required scheduled premium under any of these contracts may cause the contract to lapse.

- *Zenith Life Contract:* If the insured is under age 25 when the Zenith Life Contract is issued, premiums are payable for 40 years. If the insured is between the ages of 25 and 40 when the Zenith Life Contract is issued, premiums are payable until the insured reaches age 65. If the insured is above age 40 when the Zenith Life Contract is issued, premiums are payable for 25 years.
- *Zenith Life Plus Contract, Zenith Life Plus II Contract, Zenith Variable Whole Life Contract:* These contracts require that scheduled premium payments be made until the insured reaches age 100. The amount of the scheduled premium depends on: (i) The face amount of the contract; (ii) the age, gender (unless unisex rates apply), and underwriting class of the insured; (iii) the premium schedule the contract owner selects; and (iv) the charges for any rider benefits the contract owner elects.
- *Zenith Life Executive 65 Contract:* This contract requires scheduled premium payments from inception of the contract until the contract anniversary when the insured reaches age 65, or until 10 years after the contract is issued, whichever is later. The amount of the scheduled premium depends on: (i) The face amount of the contract; (ii) the age, gender (unless unisex rates apply), and underwriting class of the insured; (iii) the premium payment schedule selected by the contract owner; and (iv) any rider benefits.

20. The cash value of a Scheduled Premium Contract equals the sum of the cash value in the Variable Account, any cash value in the fixed account, and amounts held in NELICO's general account to support a contract loan. The cash value reflects: Scheduled premium payments and the payment schedule chosen by the contract owner; unscheduled premium payments; net investment experience of the Variable Account subaccounts; interest credited to cash value in the fixed account; interest credited to amounts held in NELICO's general account to support contract loans; the death benefit option chosen by the contract owner; contract fees and charges; partial surrenders and partial withdrawals; and transfers among the subaccounts and the fixed account.

21. Subject to certain restrictions, including restrictions on ''market timing'' transfers, Scheduled Premium Contract owners may transfer cash value between subaccounts and between the subaccounts and the fixed account. Limits may apply to transfers to and from the fixed account. NELICO reserves the right to limit transfers among subaccounts to 4 per contract year. NELICO limits transfers from the fixed account to the Variable Account to one per contract year.

22. While the insured is living, a contract owner may submit a written request to NELICO to surrender a Zenith Life Contract in whole or in part for its net cash value. A partial surrender involves splitting a contract into two contracts—one is surrendered for its net cash value, the other is continued in-force. The continued contract continues at the original contract's premium rates and generally must have a face amount of at least $25,000.

23. As to holders of Zenith Life Plus, Zenith Life Plus II, Zenith Life Executive 65, and Zenith Variable Whole Life Contracts, a contract owner may request to surrender his or her contract at any time, in whole or in part, for its net cash value. A partial surrender causes a proportionate reduction in the face amount, tabular cash value, death benefit, and basic scheduled premium. NELICO reserves the right to decline a partial surrender request that would reduce the face amount below the minimum face amount required under the contract. Any surrender charge applied reduces any remaining surrender charge under a contract.

24. Owners of each variety of Scheduled Premium Contract, except the Zenith Life Contract, may borrow all or part of their respective contract ''loan value'' (*i.e.*, (i) 90% (or more if required by state law) of ''projected cash value'' minus (ii) the surrender charge on the next loan interest due date or, if greater, on the date the loan is made, discounted at (iii) the loan interest rate). (The ''projected cash value'' is the cash value projected to the next contract anniversary or, if earlier, the next premium due date, at a set rate of interest.) Zenith Life Contract owners may borrow all or part of their respective contract ''loan value'' (*i.e.*, (i) ''projected cash value'' (ii) discounted at the loan interest rate and (iii) multiplied by 90%).

25. Subject to certain adjustments, the death benefit available under the Zenith Life Contract will equal the greater of the ''variable death benefit'' and the ''guaranteed minimum death benefit.'' The ''guaranteed minimum death benefit'' equals the initial face amount specified in the policy form for the contract, assuming that premiums have been paid when due and there is no outstanding contract loan. The ''variable death benefit'' initially equals the initial face amount of the contract, and may increase or decrease, after the first contract month, depending on the net investment experience of the Variable Account subaccounts. Whether a contract's ''variable death benefit'' exceeds the ''guaranteed minimum death benefit'' depends on the net investment experience of the Variable Account subaccounts.

26. Owners of the Zenith Life Plus Contract, the Zenith Life Plus II Contract, Zenith Life Executive 65 Contract, and the Zenith Variable Whole Life Contract must choose between two

death benefit options at the time they apply for a contract. Once selected, the death benefit option under a contract may not be changed.

• Option 1–The death benefit equals the face amount of the contract. The death benefit is fixed.

• Option 2–The death benefit equals the face amount of the contract plus the amount by which the cash value exceeds the ''tabular cash value'' of the contract. The ''tabular cash value'' is the value the contract would have if: (i) A contract owner paid all scheduled premiums when due; (ii) a contract owner made no unscheduled payments, partial surrenders, partial withdrawals, loans or reductions in face amount; (iii) the Variable Account subaccounts earned a specified constant annual net rate of return of 5% for the Zenith Life Plus Contract and 4.5% for the Zenith Life Plus II Contract, the Zenith Life Executive 65 Contract, and the Zenith Variable Whole Life Contract; and (iv) NELICO deducted cost of insurance charges using the maximum guaranteed cost of insurance rates or, for the Zenith Life Plus II Contract, the Zenith Life Executive 65 Contract, and the Zenith Variable Whole Life Contract, the maximum contract charges.

Under these Scheduled Premium Contracts, the minimum death benefit will equal the face amount of the contract as long as the contract owner pays the required scheduled premium and there is no ''excess policy loan'' (*i.e.,* the difference between (i) the amount of the policy loans plus accrued interest and (ii) the amount of the contract value less any applicable surrender charge, on the next date that interest is due under the policy loan).

27. NELICO deducts the following charges from scheduled premiums paid to arrive at a basic premium payment for a Scheduled Premium Contract.

• *Zenith Life Contract*—NELICO deducts charges for any optional insurance benefits the contract owner selects by rider, any additional amounts paid for a Zenith Life Contract for an insured in a substandard risk classification, and an annual administrative charge. NELICO assesses an additional one-time administrative charge during the first contract year. NELICO also assesses a sales charge that varies depending upon the contract year and grades down over time (the maximum sales charge is 20% of the basic premium payments in the first contract year, 12% of the basic premium payments made for the second through fourth contract years, and 7.75% of the basic premium payments in the subsequent contract years); a state premium tax charge (2% of the basic premium) to cover the average cost of state premium taxes; and a minimum death benefit risk charge (1.2% of the basic premium) to protect against the prospect that the variable death benefit under the Zenith Life Contract will be less than the guaranteed minimum death benefit under the contract.

• *Zenith Life Plus Contract, Zenith Life Plus II Contract, Zenith Life Executive 65 Contract, Zenith Variable Whole Life Contract*—NELICO deducts charges for: any rider benefits the contract owner selects; additional amounts payable for substandard risk or automatic issue risk classes; the portion of the annual administrative charge that is due with the scheduled premium payment (ranging from $57.75 to $58.41 of every $1,000 of face amount on an annual basis); a sales charge (discussed below); a state premium tax charge (ranging from two to two and a half percent of premiums paid); and (for the Zenith Life Plus II Contract, the Zenith Life Executive 65 Contract, and the Zenith Variable Whole Life Contract only) a Federal premium tax charge (one percent of premiums paid).

The sales charge for the Zenith Life Plus Contract is 6% of each scheduled premium for the first 15 contract years and 6% of each unscheduled premium. For the Zenith Life Plus II Contract, the Zenith Life Executive 65 Contract, and the Zenith Variable Whole Life Contract, the sales charge is 5.5% of each scheduled premium for at least the first 15 contract years—thereafter, NELICO may waive this charge under certain conditions—and 5.5% of each unscheduled premium for all contract years.

28. NELICO deducts the following surrender charges from the Scheduled Premium Contracts.

• *Zenith Life Contract:* No surrender charge applies under the Zenith Life Contract.

• *Zenith Variable Whole Life Contract:* NELICO will deduct a surrender charge from cash value if a contract owner totally or partially surrenders his or her Zenith Variable Whole Life Contract, allows his or her contract to lapse, or reduces the face amount of his or her contract, during the first 11 contract years. The surrender charge is a percentage of basic scheduled premiums. The maximum surrender charge rate is 55% in the first contract year, and reduces to 0% in the eleventh contract year. NELICO limits the dollar amount of the surrender charge to an amount per $1,000 of face amount; the maximum surrender charge per $1,000 of face amount is $47 in the first contract year, and grades down to $25 per $1,000 of face amount in the eleventh contract year. In the event of a partial surrender or reduction in face amount, NELICO will deduct from cash value any surrender charge that applies in an amount that is proportional to the amount of the face amount surrendered.

• *Zenith Life Plus Contract, Zenith Life Plus II Contract, Zenith Life Executive 65 Contract:* NELICO will deduct a surrender charge from cash value if, during the first 15 contract years, a contract owner totally or partially surrenders his or her contract, allows his or her contract to lapse, or, for the Zenith Life Plus II and Zenith Life Executive 65 Contracts, reduces the face amount of his or her contract. The surrender charge includes a deferred administrative charge and a deferred sales charge. The deferred administrative charge is $5 per $1,000 of face amount in the first 10 contract years for the Zenith Life Plus Contract, reducing monthly thereafter until it reaches $0 at the end of the 15th contract year; $2.50 per $1,000 of face amount in the first contract year for the Zenith Life Plus II Contract, reducing monthly thereafter until it reaches $0 in the 11th contract year; $2.70 per $1,000 of face amount in the first contract year for the Zenith Life Executive 65 Contract, reducing monthly thereafter until it reaches $0 at the end of the 10th contract year.

For the Zenith Life Plus Contracts, the maximum deferred sales charge for an insured with an issue age of 53 or younger applies if the contract owner surrenders the contract or allows the contract to lapse in the 10th contract year. The maximum charge in that year is an amount equal to 24% of the basic scheduled premium for the first contract year plus 4% of the basic scheduled premiums for the second through the tenth contract years. The charge may be less if the issue age of the insured is above 53. For the Zenith Life Plus II Contracts, the maximum charge for an insured with an issue age of 53 or younger applies if the contract owner surrenders the contract or allows the contract to lapse or reduces the contract face amount in contract years 4 through 8. The maximum charge in that year is an amount equal to 43.5% of the basic scheduled premium for the first contract year plus 23.5% of the basic scheduled premiums in the second and third contract years, and 14.5% of the basic scheduled premium in the fourth contract year. Different maximum charges apply if the contract owner surrenders the contract, allows the contract to lapse, or reduces the face amount of the contract in the first 2

contract years. The charge may be less if the issue age of the insured is above 53. For the Zenith Life Executive 65 Contract, the maximum charge for an insured with an issue age of 50 or younger applies if the contract owner surrenders the contract or allows the contract to lapse or reduces the contract face amount in contract years 3 through 10. The maximum charge in those years is 43.5% of the first year basic scheduled premium, plus 16.5% of the basic scheduled premium for the second contract year. The charge may be less if the issue age of the insured is above 50.

The deferred sales charge applies to the lesser of (i) the total payments (both scheduled premiums and unscheduled payments) made and (ii) the contract's total basic scheduled premiums up to the date of surrender, lapse, or, for the Zenith Life Plus II Contract and the Zenith Life Executive 65 Contract, face amount reduction (even if the contract owner has not paid each of those premiums). In the event of a partial surrender or, for the Zenith Life Plus II Contract and the Zenith Life Executive 65 Contract, reduction in face amount, NELICO will deduct any deferred sales charge from cash value in an amount that is proportional to the amount of the cash value surrendered or the face amount reduction.

29. NELICO makes the following deductions from cash value. NELICO deducts these charges from the Variable Account subaccounts in proportion to the contract owner's cash value in each subaccount (these do not include deductions for certain transactions, such as reissuing or redating a contract).

NELICO deducts a cost of insurance charge each contract month.

- For the Zenith Life Plus, Zenith Life Plus II, Zenith Life Executive 65, and Zenith Variable Whole Life Contracts, beginning on the contract date and on the first day of each contract month thereafter, NELICO will assess a monthly deduction consisting of an administrative charge, a minimum death benefit guarantee charge ($0.01 per $1,000 of face amount), and (in the first contract year for the Zenith Life Plus Contract only) an additional administrative fee of $0.035 per $1,000 of face amount. If there is an outstanding contract loan and the net cash value is not large enough to pay the monthly deduction, the difference is treated as an excess contract loan and the contract may terminate. For the Zenith Life Executive 65 Contract, the monthly deduction will only apply until the contract anniversary when the insured reaches age 65, or 10 years after the contract is issued, whichever is later.
- NELICO assesses a charge to cover the mortality and expense risks it assumes in issuing the Scheduled Premium Contracts (0.35% annually for the Zenith Life Contracts, and from 0.60% to a maximum of 0.90% annually for the Zenith Life Plus Contracts, the Zenith Life Plus II Contracts, Zenith Life Executive 65 Contracts, and the Zenith Variable Whole Life Contracts).

30. The death benefit or cash value proceeds of a Scheduled Premium Contract can be paid in a lump sum or under one of the payment options available under the contract. A contract owner may select a combination of payment options. The available payment options are fixed benefit options only, and are not affected by the investment experience of the Variable Account. NELICO must consent to, and may change the payment interval to increase each payment, if installments would be less than $20.

31. Each of the Scheduled Premium Contracts and the Zenith 2001 Contract offer the same line-up of Underlying Funds. The charges against the Underlying Fund assets for investment advisory services and operating expenses are reflected in the net asset value of the Underlying Fund shares purchased by the Variable Account subaccounts. During the fiscal year ended December 31, 2004, these charges ranged from 0.31% to 1.32% (before contractual fee waivers and expense reimbursements).

32. Several benefits may be added to the Scheduled Premium Contracts by rider. These additional benefits usually require an additional charge against premium payments. Not all riders are available to all Scheduled Premium Contract owners, and restrictions on rider coverage may apply in some states. NELICO may make other riders available in the future. These additional benefits include: Level Term Insurance; Accidental Death Benefit; Option to Purchase Additional Life Insurance; Waiver of Premiums—Disability of Insured; Waiver of Premiums—Disability of Applicant; Waiver of Premiums—Death of Applicant; Waiver of Premiums—Death or Disability of Applicant; Temporary Term Insurance; Children's Insurance—provides insurance on the lives of the insured's children; and Guaranteed Income Benefit (not available under the Zenith Life Contract or the Zenith Life Plus Contract).

Exchange Offer

33. Applicants propose to offer owners of the Scheduled Premium Contracts the opportunity to exchange their contracts for Zenith 2001 Contracts (''Exchanged Zenith 2001 Contracts''). For reasons set forth below, Applicants believe that the proposed exchanges will benefit current Scheduled Premium Contract owners.

- The Exchanged Zenith 2001 Contracts offer greater investment flexibility than is available under the Scheduled Premium Contracts because the Exchanged Zenith 2001 Contract gives the contract owner the flexibility to make premium payments as he or she determines. The Scheduled Premium Contracts, by contrast, require that premium payments be made on a schedule prescribed by NELICO; failure to pay a scheduled premium may result in lapse of the Scheduled Premium Contract.
- The ability to change the death benefit option under the Exchanged Zenith 2001 Contract after the first contract year enables contract owners to alter their coverage by, for example, building cash values more quickly or increasing total death benefit amounts available under their contracts.
- The ability to increase contract face amount by acquiring an ''increase contract,'' which has no policy charge and is available at a lower face amount than would otherwise be available under a Zenith 2001 Contract, enables contract owners to adjust their contract benefits to account for changes (*i.e.*, increases) in their need for coverage. This ''increase contract,'' used to effect the increase in face amount increase, would be a new Zenith 2001 Contract that is separate from the Exchanged Zenith 2001 Contract.
- The maximum surrender charge period under the Exchanged Zenith 2001 Contract is 10 years, one year shorter than the maximum surrender charge period that would be applicable if the Zenith 2001 Contract were purchased independently of the proposed exchange. Surrender charges will be waived entirely for Zenith 2001 Contracts exchanged for Zenith Life Contracts. Each of the other Scheduled Premium Contracts has a longer surrender charge period than the Exchanged Zenith 2001 Contract—11 years for the Zenith Variable Whole Life Contract, and 15 years for the Zenith Life Plus Contract, the Zenith Life Plus II Contract, and the Zenith Life Executive 65 Contract.
- Contract owners will receive credit for the amount of time they held the Scheduled Premium Contract in determining any surrender charge applicable to the Exchanged Zenith 2001 Contract. Although NELICO will make adjustments to the otherwise applicable surrender charges under the Exchanged Zenith 2001 Contracts, as

described in more detail below, the applicable surrender charges under the Exchanged Zenith 2001 Contract will be the same as or lower than those that would apply under the Scheduled Premium Contracts that are exchanged for Zenith 2001 Contracts.

34. The exchange offer will only be made to owners of Scheduled Premium Contracts that satisfy the new business criteria of the Zenith 2001 Contract. To be eligible for the exchange, the face amount of the Scheduled Premium Contract must be at least $25,000 ($50,000 in New Jersey), the insured generally must be age 85 or younger, and an insured in a substandard risk class must meet certain other eligibility criteria. NELICO will notify eligible Scheduled Premium Contract owners of the exchange offer.

35. By supplements to the Scheduled Premium Contracts dated May 1, 2004, NELICO notified contract owners that it had applied to the Commission for approval of the proposed exchange offer and instructed the Scheduled Premium Contract owner to contact his or her registered representative to learn more about the availability of the proposed exchange program.

36. Contract owners who express an interest in the exchange offer will be provided, at no charge, with: (i) A prospectus for the Zenith 2001 Contract; (ii) personalized illustrations for the Exchanged Zenith 2001 Contract, showing one or more gross rates of return (including 0%) and reflecting (with equal prominence) both current and guaranteed charges under the Contract; (iii) personalized in-force illustrations of the relevant Scheduled Premium Contract (where available) [1] or a comparison of values and/or a comparison of relative costs and benefits of the relevant Scheduled Premium Contract, showing one or more gross rates of return (including 0%) and reflecting (with equal prominence) both current and guaranteed charges under the Contract; and (iv) non-personalized materials explaining, concisely and in ''Plain English,'' the terms of the exchange offer, the material differences between the contracts, and the material respects in which aspects of the Exchanged Zenith 2001 Contract are less favorable than aspects of the Scheduled Premium Contract that is being exchanged, including a general discussion of charges that are higher under the Exchanged Zenith 2001 Contract. Applicants believe the disclosure and illustration(s) given to Scheduled Premium Contract owners will provide sufficient information for them to determine which contract is better for them.

37. Under the exchange, a Zenith 2001 Contract will be issued by NELICO at the insured's attained age at the time of the exchange with the date of exchange as the issue date. The exchange offer will provide that, upon acceptance of the offer, a Zenith 2001 Contract will generally be issued with the same face amount as the Scheduled Premium Contract surrendered in the exchange.

38. If a contract owner interested in exchanging a Scheduled Premium Contract for a Zenith 2001 Contract wishes to increase the face amount of the Exchanged Zenith 2001 Contract, NELICO may, with underwriting, issue an increase contract that, together with the Exchanged Zenith 2001 Contract, will provide the increased face amount requested.

39. Owners of multiple Scheduled Premium Contracts who accept the proposed exchange offer may exchange each such Scheduled Premium Contract for a separate Exchanged Zenith 2001 Contract. Such contract owners also may exchange two or more of their Scheduled Premium Contracts for a single Exchanged Zenith 2001 Contract, provided that the issue dates for the Scheduled Premium Contracts to be exchanged are no more than two years apart. The surrender charge, if any, applicable to the single Exchanged Zenith 2001 Contract immediately upon the exchange will be determined based on the years remaining in the Scheduled Premium Contract with the shortest remaining surrender charge period.

40. An Exchanged Zenith 2001 Contract will generally be issued with the same death benefit as the respective Scheduled Premium Contract surrendered. For Scheduled Premium Contracts other than the Zenith Life Contract, the Option 1 or Option 2 death benefit selected for the Scheduled Premium Contract will carry over to the Exchanged Zenith 2001 Contract. (Applicants note that the difference in computation of the Option 2 death benefit under the Zenith 2001 Contract and the Scheduled Premium Contracts may result in a slightly higher death benefit under Option 2 of an Exchanged Zenith 2001 Contract than under Option 2 of the Scheduled Premium Contracts.) A Zenith 2001 Contract issued in exchange for a Zenith Life Contract will be issued with an Option 2 death benefit, as that death benefit option most closely corresponds to the only death benefit option available under the Zenith Life Contract. (A contract owner who elects to exchange his/her Scheduled Premium Contract for an Exchanged Zenith 2001 Contract would, in doing so, gain the right to change the death benefit option after the first contract year.)

41. NELICO will apply the cash value of the Scheduled Premium Contract being exchanged to a Zenith 2001 Contract at the time of exchange. The risk class for an Exchanged Zenith 2001 Contract will be the one most similar to the risk class for the Scheduled Premium Contract being exchanged. NELICO will not require new evidence of insurability as a condition of the exchange.

42. If the surrender charge period for an existing Scheduled Premium Contract has not expired at the time of the exchange, any surrender charges on that existing Scheduled Premium Contract will not be assessed when converting over to the Zenith 2001 Contract. NELICO will not apply the front-end sales load applicable to Zenith 2001 Contracts to the cash value of the Scheduled Premium Contract exchanged, but will deduct that front-end sales load from any new premiums paid into the Exchanged Zenith 2001 Contracts at the time of, or subsequent to, the exchange.

43. Surrender charges will be waived entirely on Zenith 2001 Contracts issued in exchange for Zenith Life Contracts. For Zenith 2001 Contracts issued in exchange for any other Scheduled Premium Contract, a surrender charge consisting of a deferred sales charge and a deferred administrative charge will apply. Contract owners will receive credit for the amount of time they held the Scheduled Premium Contract in determining any surrender charge applicable to the Exchanged Zenith 2001 Contract. Furthermore, Exchanged Zenith 2001 Contracts will impose a maximum surrender charge period of 10 years, as opposed to the 11-year maximum surrender charge period applicable to Zenith 2001 Contracts. The remaining surrender charge period under the Exchanged Zenith 2001 Contract immediately upon exchange is the difference between the Exchanged Zenith 2001 Contract's surrender charge period (10 years) and the number of years the contract owner held the Scheduled Premium Contract, rounded up to the next contract anniversary.

44. Each of the Scheduled Premium Contracts (other than the Zenith Life Contract) has a longer surrender charge period than the Exchanged Zenith 2001

[1] NELICO plans to have system capabilities to generate personalized in-force illustrations for most Scheduled Premium Contracts. However, NELICO may only be able to provide owners of the Zenith Life Contract and owners of certain classes of the other Scheduled Premium Contracts with a comparison of premiums, cash values and death benefits.

Contract; the Zenith Variable Whole Life Contract has a maximum 11-year surrender charge period and the other Scheduled Premium Contracts (other than the Zenith Life Contract) have a 15-year surrender charge period. Accordingly, NELICO has modified the surrender charge schedule applicable to the Exchanged Zenith 2001 Contract to discourage Scheduled Premium Contract owners from exchanging their contracts solely to avoid or significantly reduce the applicable surrender charges. These adjustments are as follows:

- The deferred sales charge applicable to an Exchanged Zenith 2001 Contract will be based on the ratio of (A) to (B), multiplied by (C), where:
  - (A) is the deferred sales charge percentage under the Zenith 2001 Contract corresponding to the number of years the contract owner held the Scheduled Premium Contract (rounded up as described above);
  - (B) is the maximum deferred sales charge percentage assessed under the Zenith 2001 Contract for the applicable age (up to 72%); and
  - (C) is the applicable deferred sales charge percentage for the contract year of the Exchanged Zenith 2001 Contract that would apply to a Zenith 2001 Contract purchased at the time of the exchange.
- Similarly, the deferred administration charge assessed under the Exchanged Zenith 2001 Contract will be based on the ratio of (A) to (B), multiplied by (C), where:
  - (A) is the deferred administrative charge amount under the Zenith 2001 Contract corresponding to the number of years the contract owner held the Scheduled Premium Contract (adjusted as described above);
  - (B) is the maximum deferred administrative charge amount assessed under the Zenith 2001 Contract for the applicable age (up to $2.50 per $1,000 of face amount); and
  - (C) is the applicable deferred administrative charge amount for the contract year of the Exchanged Zenith 2001 Contract that would apply to a Zenith 2001 contract purchased at the time of the exchange.

45. Applicants propose to make further adjustments to the surrender charges applicable to the Exchanged Zenith 2001 Contracts to minimize the possibility that the surrender charge under the Exchanged Zenith 2001 Contract will exceed the corresponding surrender charge on the existing Scheduled Premium Contract. In addition, the Company will monitor each individual Exchanged Zenith 2001 Contract on an ongoing basis and will make any further adjustments as may be needed to ensure that the surrender charge under that Exchanged Zenith 2001 Contract will be the same or lower than under the exchanged Scheduled Premium Contract. With these adjustments and the ongoing monitoring of the imposition of any surrender charges on Exchanged Zenith 2001 Contracts), the Applicants represent that the surrender charge under the Exchanged Zenith 2001 Contract will be the same or lower for all Scheduled Premium Contract owners who exchange their contracts for Zenith 2001 Contracts.

46. Additional benefits attached to a Scheduled Premium Contract surrendered in an exchange will carry over to the Zenith 2001 Contract acquired in the exchange only if that additional benefit (or a substantially equivalent additional benefit) is available under the Zenith 2001 Contract. Additional benefits available under the Zenith 2001 Contract—but not the Scheduled Premium Contracts—may be acquired at the time of the exchange, but may occasion the need for new evidence of insurability. Additional benefits available under the Scheduled Premium Contracts—but not the Zenith 2001 Contract—and their related charges, if any, will not be carried over to the Exchanged Zenith 2001 Contracts.

47. Loans under a Scheduled Premium Contract must be repaid prior to, or at the time of, the exchange. Loans may be repaid prior to the exchange in cash or by means of a partial surrender or a partial withdrawal (in the amount of the unpaid loan and interest thereon). Loans not repaid prior to the exchange will be repaid at the time of the exchange by applying a portion of the surrender proceeds to the amount of the loan and loan interest. In the event a loan is repaid by taking a partial surrender or a partial withdrawal before the exchange or by applying a portion of the surrender proceeds at the time of the exchange, the death benefit of the Scheduled Premium Contract will be reduced (and the face amount of the Scheduled Premium Contract may be reduced). Any communications with Scheduled Premium Contract owners describing the exchange offer will include the fact that loans must be repaid before or at the time of the exchange, as well as disclosure regarding the effects of repaying loans by means other than in cash, including potential adverse tax consequences.

48. To accept an exchange offer, a Scheduled Premium Contract owner must return his or her contract (or submit a lost policy statement) and submit a supplemental application for an Exchanged Zenith 2001 Contract. NELICO will treat any premiums submitted with the supplemental application requesting the exchange as payments under the Exchanged Zenith 2001 Contract as of the date of issue of the Exchanged Zenith 2001 Contract. All costs associated with the administration of the exchange offer will be borne by NELICO.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end investment company, or any principal underwriter for such an investment company, to make an offer to the holder of a security of such investment company, or of any other open-end investment company, to exchange his or her security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules adopted under section 11.

2. Section 11(c) of the Act provides, as relevant here, that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company must be approved by the Commission or satisfy applicable rules adopted under section 11, regardless of the basis of the exchange.

3. The Variable Account is registered under the Act as a unit investment trust. Accordingly, the proposed exchange offer constitutes an offer of exchange of securities of a registered unit investment trust for other securities of that registered unit investment trust. Thus, unless the terms of the proposed exchange offer are consistent with those permitted by Commission rule, Applicants may make the proposed exchange offer only after the Commission has approved the terms of the offer by an order pursuant to section 11(a) of the Act.

4. Section 11(c) of the Act requires Commission approval (by order or by rule) of any exchange, regardless of its basis, involving securities issued by a unit investment trust, because investors in unit investment trusts were found by Congress to be particularly vulnerable to switching operations.

5. Applicants contend that the purpose of section 11 of the Act is to prevent ''switching''—the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges. Congress found evidence of

widespread ''switching'' operations in the 1930s prior to adoption of the Act. Applicants assert that the legislative history of Section 11 makes it clear that the potential for harm to investors perceived in switching was its use to extract additional sales charges from those investors. Accordingly, according to Applicants, applications under section 11(a) and orders granting those applications appropriately have focused on sales loads or sales load differentials and administrative fees to be imposed for effecting a proposed exchange and have ignored other fees and charges, such as relative advisory fee charges of the exchanged and acquired securities.

6. Rule 11a–2, adopted in 1983 under Section 11 of the Act, by its express terms, provides blanket Commission approval of certain offers of exchange of one variable annuity contract for another or of one variable life insurance contract for another. Rule 11a–2 permits variable annuity exchanges as long as the only variance from a relative net asset value exchange is an administrative fee disclosed in the registration statement of the offering separate account, and a sales load or sales load differential calculated according to methods prescribed in the rule. Variable life insurance exchanges may vary from relative net asset exchanges only by reason of disclosed administrative fees; no sales loads or sales load differentials are permitted under the rule for such exchanges. Applicants note, however, that there is language in the adopting release for Rule 11a–2 that suggests that the rule may have been intended to permit exchanges for funding options within a single variable life insurance contract, but not the exchange of one such contract for another.

7. Given the terms of the exchange offer, Applicants do not meet the specific requirements of Rule 11a–2. Applicants note, however, that the surrender charge schedule under the existing Scheduled Premium Contracts was designed to cover the costs associated with the original sales of those contracts. If the sales charge structure under the Exchanged Zenith 2001 Contract is applied to the cash value transferred under the exchange, then some contract owners may exchange their Scheduled Premium Contracts with the intent to then surrender the Exchanged Zenith 2001 Contract and incur no or a lower surrender charge. Accordingly, NELICO has modified the surrender charge schedule applicable to the Exchanged Zenith 2001 Contracts to discourage owners of Scheduled Premium Contracts being exchanged from exchanging their contracts solely to avoid or significantly reduce the applicable surrender charges.

8. Adoption of Rule 11a–3 under the Act, permitting certain exchange offers by open-end investment companies other than separate accounts, represents the most recent Commission action under section 11 of the Act. Rule 11a–3 permits an offering company (that is an open-end management company) to charge exchanging security holders a sales load on the acquired security, a redemption fee, an administration fee, or any combination of the foregoing, provided that certain conditions are met. As with Rule 11a–2, Rule 11a–3 focuses primarily on sales or administrative charges that would be incurred by investors for effecting exchanges. Because the investment company involved in the proposed exchange is a separate account, and because the investment company is organized as a unit investment trust rather than as a management investment company, Applicants may not rely on Rule 11a–3.

9. Applicants submit that the terms of the exchange offer are, nevertheless, consistent with the legislative intent of section 11, and that the exchange has not been proposed solely for the purpose of exacting additional selling charges and profits from investors by switching them from one security to another. In support of this contention, Applicants note the following:

- No additional sales load or administrative charge will be imposed at the time of exchange. The contract value and face amount of a contract acquired in the proposed exchange (*i.e.*, the Exchanged Zenith 2001 Contract) will be no lower immediately after the exchange than that of the contract exchanged (*i.e.*, a Scheduled Premium Contract) immediately prior to the exchange (unless a loan is repaid by applying a portion of the surrender proceeds at the time of the exchange).
- Although the surrender charges applicable under the Exchanged Zenith 2001 Contract will differ from the surrender charges imposed under Zenith 2001 Contracts, NELICO will ''tack'' the time the contract owner owned the Scheduled Premium Contract for purposes of calculating the surrender charge period under the Exchanged Zenith 2001 Contract, in accordance with the requirements of Rule 11a–2 and Rule 11a–3 under the Act. Surrender charges will be waived entirely on Exchanged Zenith 2001 Contracts issued in exchange for Zenith Life Contracts. In addition, the shorter (11-year) surrender charge period applicable under the Exchanged Zenith 2001 Contract will relieve many Scheduled Premium Contract owners of several remaining years of surrender charges as a result of the exchange. Moreover, the surrender charges under the Exchanged Zenith 2001 Contracts will be the same as or lower than those that would apply under the Scheduled Premium Contracts that are exchanged for Zenith 2001 Contracts.
- Contract owners will receive sufficient information to determine which contract best suits their needs.

10. Applicants assert that permitting contract owners to evaluate the relative merits of the exchange offers and to select the contract that best suits their circumstances and preferences fosters competition and is consistent with the public interest and the protection of investors. Accordingly, according to applicants, not only is the exchange offer consistent with the protections afforded by section 11 of the Act and the rules promulgated thereunder, but approval of the terms of the exchange offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Conclusion

For the reasons summarized above, Applicants represent that: (i) The proposed exchange offer is consistent with the intent and purpose of Section 11 of the Act and the protection of investors and the purposes fairly intended by the policy and provisions of the Act; and (ii) the terms of the proposed exchange are ones that may properly be approved by an order issued by the Division of Investment Management pursuant to delegated authority.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1990 Filed 4–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26838; 812–13182]

The PNC Financial Services Group, Inc., et al.; Notice of Application

April 21, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for a permanent order under section 9(c) of

the Investment Company Act of 1940 (the ''Act'').

Summary of Application: Applicants request a permanent order exempting them and any other company of which Riggs Bank N.A. (''Riggs Bank''), or its successors, is or hereafter becomes an affiliated person from section 9(a) of the Act, with respect to a plea agreement entered into on January 27, 2005 between Riggs Bank and the U.S. Attorney for the District of Columbia and the U.S. Department of Justice.

Applicants: The PNC Financial Services Group, Inc. (''PNC''); BlackRock, Inc. (''BlackRock, Inc.''); BlackRock Financial Management, Inc. (''BlackRock Financial''); BlackRock International, Ltd. (''BlackRock International''); BlackRock Advisors, Inc. (''BlackRock Advisors''); BlackRock Institutional Management Corporation (''BlackRock Institutional''); BlackRock Capital Management, Inc. (''BlackRock Capital''); State Street Research & Management Company (''State Street''); J.J.B. Hilliard, W.L. Lyons, Inc. d/b/a Hilliard Lyons (''Hilliard Lyons''); PFPC Distributors, Inc. (''PFPC''); BlackRock Distributors, Inc. (''BlackRock Distributors''); Northern Funds Distributors, LLC (''Northern Funds''); and ABN AMRO Distribution Services (USA), Inc. (''ABN'') (collectively, the ''Applicants'').

Filing Date: The application was filed on April 6, 2005.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 12, 2005, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Drew J. Pfirrman, The PNC Financial Services Group, Inc., 249 Fifth Avenue, 21st Floor, Pittsburgh, PA 15222, and Richard Prins, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, NY 10036.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 551–6815, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 551–8090).

Applicants' Representations

1. PNC, a Pennsylvania corporation, is a diversified financial services company that operates through its subsidiaries in five major businesses engaged in regional community banking, wholesale banking, wealth management, asset management, and global fund processing. PNC's subsidiaries have approximately $354 billion of assets under management as of December 31, 2004. BlackRock, Inc., a Delaware corporation, is a majority-owned indirect subsidiary of PNC. BlackRock Advisors, BlackRock Financial, BlackRock Institutional, BlackRock International, BlackRock Capital, and State Street are each wholly-owned direct or indirect subsidiaries of BlackRock, Inc. BlackRock Advisors, BlackRock Financial, BlackRock Institutional, Blackrock International, BlackRock Capital, and State Street are registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and provide investment advisory services to registered investment companies (''Funds'').

2. Hilliard Lyons, a wholly-owned indirect subsidiary of PNC, is a full service investment firm that is registered under the Advisers Act and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act''). Hilliard Lyons provides investment advisory services and serves as principal underwriter for two open-end Funds. PFPC, a Massachusetts corporation, is a wholly-owned indirect subsidiary of PNC. BlackRock Distributors, ABN (both Delaware corporations), and Northern Funds (a Wisconsin limited liability company), each a wholly-owned direct subsidiary of PFPC, are registered as broker-dealers under the Exchange Act and serve as principal underwriters for various open-end Funds.

3. On February 10, 2005, PNC and Riggs National Corporation (''Riggs National''), a Delaware corporation and parent of Riggs Bank, entered into a merger agreement (the ''Merger Agreement''). Under the terms of the Merger Agreement, Riggs National will merge into PNC on May 13, 2005 (''Merger''). Concurrently with the Merger, PNC Bank will acquire the assets and assume substantially all of the liabilities of Riggs Bank. Following the Merger, Riggs Bank either will be liquidated or merged into a non-bank subsidiary.

4. On January 26, 2005, the United States Attorney for the District of Columbia (the ''U.S. Attorney'') filed an information (the ''Information'') in the United States District Court for the District of Columbia alleging that from at least March 1999 through December 2003 Riggs Bank failed to file timely or accurate suspicious activity reports (''SARs'') in violation of the Bank Secrecy Act. On January 27, 2005, the U.S. Attorney and the U.S. Department of Justice and Riggs Bank entered into a plea agreement (the ''Plea Agreement''), under which Riggs Bank pled guilty to a single count of failing to file timely or accurate SARs.[1] Riggs Bank agreed to pay a $16 million fine and agreed to a five-year period of corporate probation, which will terminate immediately upon the closing of a sale of Riggs Bank or any other change-of-control transaction. The individuals at Riggs National and at Riggs Bank who were identified as being responsible for the conduct underlying the Plea Agreement have either resigned or have been terminated.

Applicants' Legal Analysis

1. Section 9(a)(1) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company or registered unit investment trust, if such person within ten years has been convicted of any felony or misdemeanor arising out of such person's conduct, as, among other things, a bank. Section 2(a)(10) of the Act defines the term ''convicted'' to include a plea of guilty. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(1) to a company any affiliated person of which is disqualified under the provisions of section 9(a)(1). ''Affiliated person'' is defined in section 2(a)(3) of the Act to include, among

[1] In addition to the Plea Agreement, Riggs Bank was directly and indirectly subject to several other government actions related to the conduct that led to the filing of the Information. See *In re Riggs Bank Nat'l Assn*, No. 2003–79 (July 16, 2003), *In re Riggs Bank N.A.*, No. 2004–43, AA–EC–04–54 (May 13, 2004), *In re Riggs Bank N.A.*, No. 2004–44, AA–EC–04–55 (May 13, 2004), *In re Riggs Bank N.A.*, No. 2005–1, AA–EC–04–54 (Jan. 27, 2005), *In re Riggs Bank N.A.*, No. 2004–1 (May 13, 2004) and *In re Riggs Nat'l Corp.*, Nos. 04–011–B–HC & 04–011–B–EC (May 14, 2004).

others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Sections 9(a)(1) and 9(a)(3) would, upon the closing of the Merger, have the effect of precluding the Applicants, and any other company of which Riggs Bank is or during the next ten years becomes an affiliated person, from serving as investment adviser, depositor or a principal underwriter for any Funds.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the conduct of the applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. In light of the Plea Agreement and the Merger Agreement, Applicants seek an order exempting them and any other company of which Riggs Bank, or its successors, is or hereafter becomes an affiliated person (together with the Applicants, the ''Covered Persons'') from the provisions of section 9(a) of the Act with respect to the Plea Agreement.

3. Applicants state that the prohibitions of section 9(a), as applied to the Covered Persons, would be unduly and disproportionately severe and that it would not be against the public interest or the protection of investors to grant an exemption from section 9(a). Applicants state that prohibiting them from providing services to the Funds would not only adversely affect their businesses, but also their employees. Applicants state that neither they nor any of their current or former officers, directors or employees had any involvement in the conduct underlying the Plea Agreement. All of the conduct occurred and ceased before the Merger Agreement, when the Applicants had no affiliation with the parties to the Plea Agreement. Following the Merger, no former employee of Riggs Bank who previously has been or who subsequently may be identified by PNC or any federal or state agency or court as having been responsible for the conduct underlying the Plea Agreement will be an officer, director or employee of any of the Applicants or any of the other Covered Persons. Applicants assert that the provisions of section 9(a) should not apply to the Applicants, who have taken no part in the misconduct underlying the Plea Agreement and are subject to section 9(a) solely because of the Merger Agreement.

4. Applicants have distributed, or will distribute, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds for which Applicants provide services as investment adviser or principal underwriter, including the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Funds and their independent legal counsel, as defined in rule 0–1(a)(6) under the Act, if any, regarding the Plea Agreement and the reasons applicants believe relief pursuant to section 9(c) is appropriate. Applicants undertake to provide the Funds with all the information concerning the Plea Agreement and the application necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws. Applicants also state that they have not previously applied for an exemption pursuant to section 9(c) of the Act.

Applicants' Condition

Applicants agree that any order granting the requested relief shall be subject to the following condition:

Neither the Applicants nor any of the other Covered Persons will employ any of the former employees of Riggs Bank who previously have been or who subsequently may be identified by PNC or any federal or state agency or court as having been responsible for the conduct underlying the Plea Agreement, in any capacity, without first making further application to the Commission pursuant to section 9(c) of the Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1988 Filed 4–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

In the Matter of Weida Communications, Inc., File No. 500–1; Order of Suspension of Trading

April 25, 2005.

It appears to the Securities and Exchange Commission (''Commission'') that the public interest and the protection of investors require a suspension of trading in the securities of Weida Communications, Inc. (''Weida'') because of concerns regarding potentially manipulative transactions in Weida's common stock by certain individuals associated with the company and others.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities of the above-listed company.

Therefore, *it is ordered,* pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in all securities, as defined in section 3(a)(10) of the Securities Exchange Act of 1934, issued by Weida, is suspended for the period from 9:30 a.m. E.D.T. on April 25, 2005 and terminating at 11:59 p.m. E.D.T. on May 6, 2005.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–8515 Filed 4–25–05; 1:26 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51591: File No. SR–Amex–2005–027]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the Use of Certain Consolidated Tape Association Financial Status Indicator Fields and Related Disclosure Obligations

April 21, 2005.

On February 25, 2005, the American Stock Exchange LLC (''Amex'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the use of certain Consolidated Tape Association financial status indicator fields and related disclosure obligations. The Commission published the proposed rule change for comment in the **Federal Register** on March 21, 2005.[3] On March 25, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[4] The Commission did not receive any comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 51367 (March 14, 2005), 70 FR 13555.

[4] Amendment No. 1 made technical changes to the proposed rule change and does not require notice.

exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of the Amex be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposal will add greater transparency and disclosure to the investing community. The proposed rule change provides that the Amex will utilize certain of the financial status indicator fields in CTS and CQS[7] to identify listed companies that (i) are noncompliant with continued listing standards and/or (ii) are delinquent with respect to a required federal securities law periodic filing. It also provides that the Amex will post a list of issuers subject to each indicator on its website. In addition, it will require an indicator to be disseminated over the High Speed Tape with respect to an issuer that has filed or announced it's intent to file for reorganization relief under the bankruptcy laws (or an equivalent foreign law). Finally, the proposal amends Sections 401 and 1009 of the Amex Company Guide to explicitly clarify that issuance of a press release is required when a listed company is notified that it is noncompliant with the applicable continued listing standards. The Commission believes that the proposal will increase disclosure to investors when issuers are noncompliant with continued listing standards and/or are delinquent with respect to a required federal securities law periodic filing.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–2005–27) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1987 Filed 4–26–05; 8:45 am]

BILLING CODE 8010–01–P

[5] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] CTS and CQS, which are operated by the CTA, collect last-sale prices and current bid/ask quotations, respectively, with associated volumes for all exchange-listed equities. All trades and quotations in Amex-listed equities, regardless of the market center on which such equities are traded or quoted, are reported to CTS and CQS and disseminated on Tape B (also known as Network B).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51580; File No. SR–PCX–2005–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Arbitration Fees

April 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by PCX. On April 18, 2005, the PCX filed Amendment No. 1 to the proposed rule change.[3] The PCX filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(3) thereunder,[5] as one concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend the PCX arbitration rules in order to make a minor rule numbering change. The text of the proposed rule change, as amended, is available on PCX's Web site (*http://www.pacificex.com*), at the principal office of the PCX, and at the Commission's Public Reference Section.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The Exchange proposes to make a minor rule numbering change to the PCX arbitration rules. In December 2004, the Exchange filed a proposed rule change with the Commission to amend the PCX Options and PCX Equities (''PCXE'') arbitration rules with respect to arbitration fees that only affect OTP Holders, OTP Firms and ETP Holders.[6] As part of that filing, the Exchange proposed to adopt a Pre-Hearing and Hearing Process Fee in PCX Rule 12.33 and PCXE Rule 12.32(k). At this time, the Exchange proposes to renumber the PCX Options rule for Pre-Hearing and Hearing Process Fees from PCX Rule 12.33 to PCX Rule 12.31(k) so that the rule is similarly located for both PCX Options and PCX Equities. PCX Rule 12.31 contains the Schedule of Fees for arbitration proceedings. The Exchange believes the renumbering will provide consistency and ease of use for Exchange staff as well as the OTP Holders, OTP Firms, ETP Holders and the public. The Exchange does not propose any substantive changes to this rule or any rule renumbering changes for PCX Equities.

Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)[7] of the Act, in general, and Section 6(b)(4) of the Act[8], in particular, in that it provides for the equitable allocation of reasonable fees and charges among its OTP Holders, OTP Firms, ETP Holders, issuers and other persons using its facilities. The Exchange also believes the proposal, as amended, is consistent with Section 6(b)(5)[9] in that it is related to the administration of the Exchange because it reorganizes the Exchange's rules but does not change the substance of these rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the PCX provided an additional statutory basis for this proposal.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(3).

[6] *See* Exchange Act Release No. 51102 (January 28, 2005), 70 FR 6063 (February 4, 2005) (SR–PCX–2004–118).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change, as amended, were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(iii) [10] of the Act and subparagraph (f)(3) of Securities Exchange Act Rule 19b–4 [11] thereunder as one concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–36 and should be submitted on or before May 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1986 Filed 4–26–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 5 U.S.C. § 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b-4(f)(2).

[12] For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 18, 2005, when Amendment No. 1 was filed. *See,* supra, note 3.

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 05–03p.; Title XVI: Determining Continuing Disability at Step 2 of the Medical Improvement Review Standard Sequential Evaluation Process for Children Under Age 18—Functional Equivalence

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 05–03p. This Ruling explains our policies for determining continuing disability at step 2 of the medical improvement review standard for children under 20 CFR 416.994a(b)(2).

EFFECTIVE DATE: April 27, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Hicks, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, 4352 Annex Building, Baltimore, MD 21235–6401, (410) 965–9119. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program No. 96.006 Supplemental Security Income.)

Dated: April 21, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Policy Interpretation Ruling

Title XVI: Determining Continuing Disability at Step 2 of the Medical Improvement Review Standard Sequential Evaluation Process for Children Under Age 18—Functional Equivalence.

Purpose: To explain our policies for determining continuing disability at step 2 of the medical improvement review standard (MIRS) sequential evaluation process for children under 20 CFR 416.994a(b)(2) and to explain how we apply the functional equivalence rule at step 2.

Citations (Authority): Sections 1614(a)(3), 1614(a)(4), and 1614(c) of the Social Security Act; Regulations No. 16, subpart I, sections 416.924, 416.925, 416.926, 416.926a, and 416.994a.

Introduction: When we conduct a continuing disability review, we use a three-step MIRS sequential evaluation process, outlined in 20 CFR 416.994a(b).

1. At step 1, we determine whether there has been medical improvement in the impairment(s) that was present at the time of the most recent favorable determination or decision. (20 CFR 416.994a(b)(1)). We refer to the most recent favorable determination or decision as the ''comparison point decision'' (CPD), and we refer to the impairment(s) that was present at the time of the most recent favorable determination or decision as the ''CPD impairment(s).'' If there has been no medical improvement in the CPD impairment(s), we find that the child's disability continues. If there has been medical improvement, we proceed to step 2.[1]

2. At step 2, we determine whether the CPD impairment(s) still meets or medically or functionally equals ''the severity of the listed impairment'' that it met or equaled at the time of the CPD. (20 CFR 416.994a(b)(2)). If the CPD impairment(s) still meets or medically or functionally equals the severity of the listing we considered at the CPD, we find that the child is still disabled. As long as we determine that the CPD impairment(s) currently meets or medically or functionally equals the listing we considered before, we do not have to make the same finding we made at the CPD. For example, if we found at the CPD that the child's impairment(s) met a listing, and now it no longer meets that listing but it medically equals that listing, we find that the child's disability continues. Likewise, if we found that the child's impairment(s) functionally equaled a listing, and now it meets that listing, we find that the child's disability continues. If the CPD impairment(s) does not still meet or equal the severity of that listed impairment, we proceed to step 3.

3. At step 3, we determine whether the child is currently disabled, considering all current impairments. (20 CFR 416.994a(b)(3)). We determine if the child's current impairment(s) is severe, as defined in 20 CFR 416.924(c). If the impairment(s) is not severe, we find that the child's disability has ended. If the impairment(s) is severe, we consider whether it meets or medically equals a listing. (20 CFR 416.924(d), 416.925, 416.926). If it does, we find that the child's disability continues. If not, we consider whether it functionally equals the listings. (20 CFR 416.926a). If it does, we find that the child's disability continues. If not, we find that the child's disability has ended.

On September 11, 2000, we published final rules (the ''2001 rules'') for evaluating disability in children under the Supplemental Security Income program. These rules became effective on January 2, 2001.[2] In section 416.926a of the 2001 rules, (20 CFR 416.926a), we clarified and simplified our prior rules for evaluating functional equivalence [3] in a number of ways. Under the functional equivalence policies that we applied prior to January 2, 2001, we required a comparison of the child's impairment(s) to a specific listing.[4] One way in which we clarified and simplified functional equivalence under the 2001 rules was to no longer refer to specific listed impairments. Instead, we determine whether a child's impairment functionally equals the listings. To functionally equal the listings, a child's impairment(s) must cause ''marked'' limitations in two domains of functioning, or ''extreme'' limitation in one such domain, as described in 20 CFR 416.926a.

Therefore, findings of functional equivalence made on or after January 2, 2001, are not based on a specific listing.

Because our current rules about step 2 of the MIRS sequential evaluation process refer only to the specific listed impairment(s) that we considered at the CPD, we are issuing this ruling to explain how we apply the functional equivalence rules at step 2. We also explain how we apply step 2 when the CPD was based on functional equivalence to the listings.

Policy Interpretation: When we evaluate functional equivalence at step 2 of the MIRS sequential evaluation process for children in 20 CFR 416.994a(b), we use the current rules for evaluating functional equivalence.

How we apply step 2 of the MIRS sequential evaluation process for children depends on the date of and basis for the CPD. A chart that summarizes our policies on applying step 2 follows the text.

a. If the CPD was made before January 2, 2001.

If the CPD was made before January 2, 2001, it was based either on a finding that the child's impairment(s) met or medically equaled a specific listing, or functionally equaled a specific listing under the rules for functional equivalence that were in effect at the time of the CPD.

When we determine whether a child's disability continues at step 2, we first consider whether the CPD impairment(s) now either meets or medically equals the same listing that it met, medically equaled, or functionally equaled at the CPD, as that listing was written at that time. If the CPD impairment(s) now meets or medically equals the severity of that listed impairment as it was written at that time, we find that the child is still disabled.

If the CPD impairment(s) does not now meet or medically equal the CPD listing, we consider whether the CPD impairment(s) now functionally equals the listings under our current rules in 20 CFR 416.926a. If it does, we find that the child is still disabled. If it does not, we proceed to step 3.

b. If the CPD was made on or after January 2, 2001.

If the CPD was made on or after January 2, 2001, it was based either on a finding that the child's impairment(s) met or medically equaled a listing, or functionally equaled *the listings* under the current rules in 20 CFR 416.926a.

(1) If the CPD impairment(s) met or medically equaled a listing:

If our determination or decision at the time of the CPD was that the child's impairment(s) met or medically equaled a listing, we consider whether the CPD impairment(s) now either meets or medically equals that same listing, as it was written at that time. If it does, we find that the child is still disabled.

If the CPD impairment(s) does not now meet or medically equal the CPD listing, we consider whether the CPD impairment(s) now functionally equals the listings under our current rules in 20 CFR 416.926a. If it does, we find that the child is still disabled. If it does not, we proceed to step 3.

(2) If the CPD impairment(s) functionally equaled the listings:

When we determine whether a child's disability continues at step 2 and the CPD was based on functional equivalence to the listings, we consider only whether the CPD impairment(s) now functionally equals the listings. We do not consider whether the impairment(s) now meets or medically equals the CPD listing, because there is no specific CPD listing. If that impairment(s) now functionally equals the listings under our current rules in 20 CFR 416.926a, we find that the child is still disabled. If it does not, we proceed to step 3.

Chart: This chart summarizes the explanations above. Follow a. or b. as appropriate.

a. If the CPD was made before January 2, 2001:

[1] At each step of the process certain ''exceptions to medical improvement'' may apply, under which disability can be found to have ended even though medical improvement has not occurred. (20 CFR 416.994a(e)–(f)). Although we apply the exceptions when appropriate, further discussion of the exceptions is unnecessary in this Ruling.

[2] 65 FR 54747–54790 (2000).

[3] We have included the policy of functional equivalence in our childhood disability rules since 1991. See 56 FR 5534, 5543, 5561–5562 (1991).

[4] 20 CFR 416.926a(b) (1997); 20 CFR 416.926a(b) (1993); 20 CFR 416.926a(b) (1991).

Does CPD impairment(s) now either meet or medically equal the CPD listing? → YES → Disability Continues [5]
↓
NO
↓
Does CPD impairment(s) now functionally equal the listings? → YES → Disability Continues
↓
NO
↓
Proceed to Step 3

b. If the CPD was made on or after January 2, 2001, follow (1) or (2) as appropriate:

(1) CPD impairment(s) met or medically equaled a listing:

Does CPD impairment(s) now either meet or medically equal the CPD listing? → YES → Disability Continues
↓
NO
↓
Does CPD impairment(s) now functionally equal the listings? → YES → Disability Continues
↓
NO
↓
Proceed to Step 3

(2) CPD impairment(s) functionally equaled the listings:

Does CPD impairment(s) now functionally equal the listings? → YES → Disability Continues
↓
NO
↓
Proceed to Step 3.

[5] The conclusion that disability continues here and elsewhere on this chart is subject to any applicable exceptions to the MIRS standard. See footnote 1 above.

Effective Date: This SSR is effective upon publication in the **Federal Register**.

Cross-References: Program Operations Manual System, sections DI 28005.020, 28005.025, and 28005.030.

[FR Doc. 05–8390 Filed 4–26–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST 2005–21067]

Notice of Request for Extension of a Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received June 27, 2005.

ADDRESSES: You may submit comments identified by DOT–DMS Docket Number OST–2005–21067 by any of the following methods.

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401, on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bernice C. Gray or John H. Kiser, Office of the Secretary, Office of International Aviation, X–43, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2435.

SUPPLEMENTARY INFORMATION:

Title: Tariffs.

OMB Control Number: 2106–0009.

Expiration Date: September 30, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: Chapter 415 of Title 49 of the United States Code requires that every air carrier and foreign air carrier file with the Department of Transportation (DOT), publish and keep open (*i.e.,* post) for public inspection

tariffs showing all ''foreign'' or international fares, and related charges for air transportation between points served by it, and any other air carrier or foreign air carrier when through services, fares and related charges have been established; and showing, to the extent required by DOT regulations, all classifications, rules, regulations, practices, and services in connection with such air transportation. Once tariffs are filed and approved by DOT, they become a legally binding contract of carriage between carriers and users of foreign air transportation.

Part 221 of the Department's Economic Regulations (14 CFR part 221) sets forth specific technical and substantive requirements governing the filing of tariff material with the DOT Office of International Aviation's Pricing and Multilateral Affairs Division. A carrier initiates an electronic tariff filing whenever it wants to amend an existing tariff for commercial and competitive reasons or when it desires to file a new one. Electronic tariffs filed pursuant to part 221 are used by carriers, computer reservation systems, travel agents, DOT, other government agencies and the general public to determine the prices, rules and related charges for international passenger air transportation. In addition, DOT needs U.S. and foreign air carrier passenger tariff information to monitor international air commerce, carry out carrier route selections and conduct international negotiations.

Part 293 exempts carriers from their statutory and regulatory duty to file international tariffs in many specific markets.

Respondents: The vast majority of the air carriers filing international tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer on-demand air-taxi service are not required to file such tariffs.

Estimated Total Annual Burden on Respondents: 650,000 hours.

Estimated Number of Respondents: 250; Form(s) 13,340 electronic filings or applications per annum.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington DC, on April 21, 2005.

John H. Kiser,

Chief, Pricing and Multilateral Affairs Division, Office of International Aviation.

[FR Doc. 05–8375 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending April 15, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–20964.

Date Filed: April 12, 2005.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–AFR 0221 dated 8 March 2005, PTC2 Europe-Africa Resolutions r1–r19, PTC2 EUR–AFR 0222 dated 18 March 2005, Technical Correction to Resolution 074q, PTC2 EUR–AFR 0224 dated 8 April 2005, Technical Correction to Resolution 002, Minutes: PTC2 EUR–AFR 0225 dated 12 April 2005, Tables: PTC2 EUR–AFR Fares 0130 dated 11 March 2005, Intended effective date: 1 May 2005.

Maria Gulczewski,

Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 05–8451 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Motor Vehicles; Alternative Fuel Vehicle (AFV) Report

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Availability—Fleet (AFV) Report.

SUMMARY: In accordance with the Energy Policy Act of 1992 (EPAct) (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and Executive Order (EO) 13149, ''Greening the Government Through Federal Fleet and Transportation Efficiency,'' the Department of Transportation's FY 2004 annual alternative fuel vehicle report is available on the Department of Transportation Web site: *http://isddc.dot.gov/OLPFiles/OST/011928.pdf.* The report is also available at: *http://isddc.dot.gov,* follow the search instructions to search for ''DOT FY04 AFV.''

FOR FURTHER INFORMATION CONTACT: George Kuehn, Office of Transportation and Facilities, 400 7th Street SW., Washington, DC 20590; telephone (202) 366–1614.

Dated: April 21, 2005.

Rita Martin,

Director, Administrative Management Policy Division.

[FR Doc. 05–8374 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Onboard Recording of Data Communications in Crash Survivable Memory

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and requests comment on, a draft advisory circular (AC) on aircraft data link recording systems in crash survivable memory. The AC offers one way to achieve minimum acceptable recording system performance and design approval objectives alluded to as part of the Notice of Proposed Rulemaking (NPRM), Docket Number FAA–2005–20245 on cockpit voice recorders and digital flight data recorders.

DATES: Comments must be received on or before (May 27, 2005).

ADDRESSES: Deliver all comments on this draft AC to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. Gregory Frye. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Frye, AIR–130, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 385–4649, or Fax: (202) 385–4651 or e-mail: *gregory.efrye@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the draft AC by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date, in Room 815 at the above address, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing the final AC.

Background

This AC focuses on aircraft recording system performance and logical recording point locations for storing data communication information in onboard crash-survivable memory. Issuance of this AC is based in part, on recommendations received from the National Transportation Safety Board (NTSB), following investigations of several aircraft accidents and incidents. This AC provides guidelines to improve the quality and quantity of recorded in-flight information, allowing for an increase in the potential for the retention of important information needed during accident and incident investigations.

How To Obtain Copies

You can view or download the draft AC from its online location at: *www.airweb.faa.gov/rgl.* At this Web page, select ''Draft Advisory Circulars.'' For a paper copy, contact the person listed in **FOR FURTHER INFORMATION CONTACT** section of this notice.

Issued in Washington, DC, on April 21, 2005.

Susan J. M. Cabler,

Acting Manager, Aircraft Engineering Division Aircraft Certification Service.

[FR Doc. 05–8346 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–25]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 17, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2005–20583 or FAA–2005–20679, as applicable] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair (425) 227–1556, Transport Airplane Directorate, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 21, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–20583.
Petitioner: Dassault Aviation.
Section of 14 CFR Affected: 14 CFR 91.613(b) and 135.170(c).
Description of Relief Sought: To permit relief from the requirements for material in compartment interiors for Falcon 20 and Falcon 200 series airplanes.

Docket No.: FAA–2005–20679.
Petitioner: Dassault Aviation.
Section of 14 CFR Affected: 14 CFR 91.613(b) and 135.170(c).
Description of Relief Sought: To permit relief from the requirements for material in compartment interiors for Falcon F900EX, F2000EX, F2000, and F50EX series airplanes.

[FR Doc. 05–8455 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–24]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair (425–227–1556), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 21, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2004–19956.
Petitioner: Evergreen International Airlines, Inc.
Sections of 14 CFR Affected: 14 CFR 25.809(f)(1).

Description of Relief Sought/ Disposition: To permit the removal of the crew escape slides without reducing the upper deck occupancy on Boeing Model 747–100, –200, –200C, and –200F series airplanes. *Grant of Exemption, 04/01/2005, Exemption No. 8536*

Docket No.: FAA–2002–13872.

Petitioner: Airbus UK Limited.

Sections of 14 CFR Affected: Part 21, SFAR No. 88.

Description of Relief Sought/ Disposition: To allow Airbus to operate Airbus Model BAC–1–11–200/400 airplanes without meeting the requirements of SFAR–88. *Partial Grant of Exemption, 04/05/2005, Exemption No. 8535*

Docket No.: FAA–2003–15812.

Petitioner: Airbus.

Sections of 14 CFR Affected: 14 CFR 25.562(b)(2).

Description of Relief Sought/ Disposition: To permit relief from the floor warpage testing requirement for flightdeck seats on the Airbus Model A380 airplanes. *Grant of Exemption, 04/01/2005, Exemption No. 8538*

[FR Doc. 05–8456 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose the Revenue From a Passenger Facility Charge (PFC) at Arcata Airport, Arcata/Eureka, CA, and Use the PFC Revenue at Arcata, Murray Field, Dinsmore, Garberville, and Kneeland Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Arcata Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 27, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Allen Campbell, Public Works Director, County of Humboldt, at the following address: 1106 Second Street, Eureka, CA 94401. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Humboldt under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriguez, Environmental Planning and Compliance Section Supervisor, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2778, extension 610. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Arcata Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 28, 2005, the FAA determined that the application to impose and use the revenue from PFC submitted by the County of Humboldt was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 24, 2005.

The following is a brief overview of the impose and use application No. 05–07–C–00–ACV:

Level of proposed PFC: $4.50.

Proposed charge effective date: September 1, 2005.

Proposed charge expiration date: August 1, 2006.

Total estimated PFC revenue: $392.265.00.

Brief description of the proposed projects; Benefit cost analysis for proposed runway 14/32 extension, security enhancements/terminal modifications, environmental assessment for the proposed runway 14/32 extension, rehabilitate runway 1/19, rehabilitate taxiways B and G, replace aircraft rescue and firefighting vehicle, and PFC Administrative costs at Arcata Airport; install wildlife fencing at Murray Field Airport; construct/improve airport drainage, and reconstruct/rehabilitate runway 9/27 at Dinsmore Airport; install perimeter fencing and gates at Garberville Airport; complete an environmental evaluation for airport drainage projects at Kneeland Airport. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the County of Humboldt.

Issued in Lawndale, California, on March 28, 2005.

Mia Paredes Ratcliff,

Manager, Planning and Programming Branch, Western-Pacific Region.

[FR Doc. 05–8347 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2005–21025]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, National Highway Traffic Safety Administration, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the

comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for the collection of information may be obtained at no charge from Mr. Christopher J. Wiacek, National Highway Traffic Safety Administration (NVS–216), 400 Seventh Street, SW (Room 5319), Washington, DC 20590. Mr. Wiacek's telephone number is (202) 366–7042. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collections of information:

(1) *Title:* Reporting of Information and Documents about Potential Defects—49 CFR part 579.

OMB Control Number: 2127–0616.

Affected Public: Manufacturers of motor vehicles and motor vehicle equipment.

Abstract: Under Chapter 301 of Title 49 of the United States Code, manufacturers of motor vehicles and items of motor vehicle equipment are periodically required to submit certain information to NHTSA, including information about claims and notices about deaths and serious injury, property damage data, communications to customers and others, and information on incidents resulting in fatalities or serious injuries from possible defects in vehicles or equipment in the United States or in identical or substantially similar vehicles or equipment in foreign countries. The statute also authorized NHTSA to require the submission of other data that may assist in the identification of safety-related defects in vehicles and equipment.

Information and documents submitted is intended to provide NHTSA with ''early warning'' of potential safety-related defects in motor vehicles and motor vehicle equipment. NHTSA will rely on the information provided (as well as other relevant information) in deciding whether to open safety defect investigations.

Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects (OMB Control Number 2127–0620) will not be addressed separately and will be merged with this request for collections.

Estimated Annual Burden Cost: $1,721,877.

Estimated Annual Burden Hours: 20,102 hours.

Number of Respondents: 500.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Kathleen C. Demeter,

Director for Office of Defects Investigation.

[FR Doc. 05–8454 Filed 4–26–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its proposed information collection titled, ''OCC Communications Questionnaire.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments by May 27, 2005.

ADDRESSES: You should direct your comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0226, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Mark Menchik, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division. Questions regarding content of the questionnaire should be directed to Oliver Robinson, Communications Division, (202) 874–5533.

SUPPLEMENTARY INFORMATION: The OCC is requesting OMB approval of the following information collection:

Title: OCC Communications Questionnaire.

OMB Number: 1557–0226.

Description: The OCC is proposing to collect information from communication product users regarding the quality, timeliness, and effectiveness of its booklets, issuances, CDs, and Web sites. Completed questionnaires will provide the OCC with information needed to properly evaluate and improve the effectiveness of its paper and electronic communications

products. The OCC will use the information to identify problems and to improve its service to national banks.

Type of Review: Revision of a currently approved collection.

Affected Public: Users of electronic and print communication products.

Estimated Number of Respondents: 2,300.

Estimated Total Annual Responses: 4,600.

Frequency of Response: Twice annually.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden: 767 burden hours.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 05–8397 Filed 4–26–05; 8:45 am]

BILLING CODE 4810–33–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 05–09]

Privacy Act of 1974; Altered System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of alteration to a Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Office of the Comptroller of the Currency (OCC) is altering its system of records Treasury/Comptroller .110-Reports of Suspicious Activities.

DATES: The proposed altered system of records will become effective May 27, 2005 unless comments are received which would result in a contrary determination.

ADDRESSES: You should send your comments to the Communications Division, Docket No. 00–xx, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. You may inspect any comments received at the same location. You may send your comments by facsimile transmission to FAX number 202–874–5263 or by electronic mail to *REGS.COMMENTS@OCC.TREAS.GOV*.

FOR FURTHER INFORMATION CONTACT: Frank Vance, Jr., Disclosure Officer, Communications Division, (202) 874–4700 or Ellen M. Warwick, Senior Counsel, Administrative and Internal Law Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the OCC is proposing to alter a system of records, Treasury/Comptroller .110–Reports of Suspicious Activities. This system has not been updated for several years. A notice for this system of records was last published in the **Federal Register** at 66 FR 54334 dated October 26, 2001. The OCC is altering its current system of records covering reports of suspicious activities to clarify the system location and the system manager.

For the reasons set forth above, the OCC proposes to alter the Treasury/Comptroller .110–Reports of Suspicious Activities as follows:

Treasury/Comptroller .110

SYSTEM NAME:

Reports of Suspicious Activities.

SYSTEM LOCATION:

* * *

Description of change: Remove ''filed by OCC personnel or by national banks, District of Columbia banks operating under the OCC's regulatory authority, or federal branches or agencies of foreign banks (OCC-regulated entities)'' from the second sentence of the second paragraph and revise the second sentence to read:

''Information extracted from or relating to SARs or reports of crimes and suspected crimes is maintained in an OCC electronic database.''

* * *

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SYSTEM MANAGERS AND ADDRESS:

Description of change: Revise the system manager by removing ''Enforcement and Compliance Division, Law Department'' and in its place add ''Special Supervision Division, Midsize/Community Bank Supervision.''

* * * * *

Dated: April 21, 2005.

Jesus H. Delgado-Jenkins,

Acting Assistant Secretary for Management.

[FR Doc. 05–8388 Filed 4–26–05; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–165868–01]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–165868–01, Ten or More Employer Plan Compliance Information (§ 419A(f)(6)).

DATES: Written comments should be received on or before June 27, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Ten or More Employer Plan Compliance Information.

OMB Number: 1545–1795.

Regulation Project Number: REG–165868–01.

Abstract: The regulation allows the Internal Revenue Service and participating employers to verify that a ten-or-more employer welfare benefit plan complies with the requirements of section 419A(f)(6) of the Internal Revenue Code. Respondents are administrators of Ten-or-more employer plans.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit or not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Total Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 18, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1956 Filed 4–26–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
April 27, 2005

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 222 and 229

Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket No. FRA–1999–6439, Notice No. 16]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: On December 18, 2003, FRA published an interim final rule that required that the locomotive horn be sounded while trains approach and enter public highway-rail grade crossings. The interim final rule contained an exception to the above requirement in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or safety measures fully compensate for the absence of the warning provided by the locomotive horn. Communities that qualify for this exception may create ''quiet zones'' within which locomotive horns would not be routinely sounded. The final rule issued today amends certain provisions of the interim final rule to facilitate the development of quiet zones, while balancing the needs of railroads, States and local communities.

DATES: The effective date is June 24, 2005. However, public authorities may begin to provide quiet zone-related documentation to FRA and other parties 30 days after April 27, 2005. This final rule supercedes the interim final rule, which was published on December 18, 2003. Therefore, the interim final rule will not take effect.

FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6299); or Kathryn Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION:

1. Background

On January 13, 2000, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (65 FR 2230) addressing the use of locomotive horns at public highway-rail grade crossings. This rulemaking was mandated by Public Law 103–440, which added section 20153 to title 49 of the United States Code. The statute requires the Secretary of Transportation (whose authority in this area has been delegated to the Federal Railroad Administrator under 49 CFR 1.49) to issue regulations that require the use of locomotive horns at public grade crossings, but gives the Secretary the authority to make reasonable exceptions.

In accordance with the Administrative Procedure Act (5 U.S.C. 553), FRA solicited written comments from the public. By the close of the comment period on May 26, 2000, approximately 3,000 comments had been filed with this agency regarding the NPRM and the associated Draft Environmental Impact Statement. As is FRA's practice, FRA held the public docket open for late filed comments and considered them to the extent possible.

Due to the substantial and wide-ranging public interest in the NPRM, FRA conducted a series of public hearings throughout the United States in which local citizens, local and State officials, Congressmen, and Senators provided testimony. Twelve hearings were held (Washington, DC; Fort Lauderdale, Florida; Pendleton, Oregon; San Bernadino, California; Chicago, Illinois (four hearings were held in the greater Chicago area); Berea, Ohio; South Bend, Indiana; Salem, Massachusetts; and Madison, Wisconsin) at which more than 350 people testified.

On December 18, 2003, FRA published an Interim Final Rule in the **Federal Register** (68 FR 70586). Even though FRA could have proceeded directly to the final rule stage, FRA chose to issue an interim final rule in order to give the public an opportunity to comment on changes that had been made to the rule. FRA also held a public hearing in Washington, DC on February 4, 2004. By the close of the extended comment period, over 1,400 comments had been filed with the agency regarding the Interim Final Rule. As is FRA's practice, FRA held the public docket open for late-filed comments and considered them to the extent possible. In order to avoid imposing inconsistent regulatory standards for quiet zone creation and establishment, FRA extended the effective date of the Interim Final Rule on November 22, 2004 (69 FR 67858) and on March 18, 2005 (70 FR 13117) so that the Interim Final Rule would not take effect before the Final Rule was issued.

2. Statutory Mandate

On November 2, 1994, Congress passed Public Law 103–440 (''Act'') which added section 20153 to title 49 of the United States Code (''title 49''). Subsections (I) and (j) were added on October 9, 1996 when section 20153 was amended by Public Law 104–264. The Act requires the use of locomotive horns at public grade crossings, but gives FRA the authority to make reasonable exceptions.

Section 20153 of title 49 states as follows:

''Section 20153. Audible warning at highway-rail grade crossings.

(a) Definitions.—As used in this section—

(1) the term ''highway-rail grade crossing'' includes any street or highway crossing over a line of railroad at grade;

(2) the term ''locomotive horn'' refers to a train-borne audible warning device meeting standards specified by the Secretary of Transportation; and

(3) the term ''supplementary safety measure'' (SSM) refers to a safety system or procedure, provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Secretary to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. A traffic control arrangement that prevents careless movement over the crossing (*e.g.,* as where adequate median barriers prevent movement around crossing gates extending over the full width of the lanes in the particular direction of travel), and that conforms to the standards prescribed by the Secretary under this subsection, shall be deemed to constitute an SSM. The following do not, individually or in combination, constitute SSMs within the meaning of this subsection: standard traffic control devices or arrangements such as reflectorized crossbucks, stop signs, flashing lights, flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals.

(b) Requirement.—The Secretary of Transportation shall prescribe regulations requiring that a locomotive horn shall be sounded while each train is approaching and entering upon each public highway-rail grade crossing.

(c) Exception.—(1) In issuing such regulations, the Secretary may except from the requirement to sound the locomotive horn any categories of rail operations or categories of highway-rail grade crossings (by train speed or other factors specified by regulation)—

(A) that the Secretary determines not to present a significant risk with respect to loss of life or serious personal injury;

(B) for which use of the locomotive horn as a warning measure is impractical; or

(C) for which, in the judgment of the Secretary, SSMs fully compensate for the absence of the warning provided by the locomotive horn.

(2) In order to provide for safety and the quiet of communities affected by train operations, the Secretary may specify in such regulations that any SSMs must be applied to all highway-rail grade crossings within a specified distance along a railroad in order to be excepted from the requirement of this section.

(d) Application for Waiver or Exemption.—Notwithstanding any other provision of this subchapter, the Secretary may not entertain an application for waiver or exemption of the regulations issued under this section unless such application shall have been submitted jointly by the railroad carrier owning, or controlling operations over, the crossing and by the appropriate traffic control authority or law enforcement authority. The Secretary shall not grant any such application unless, in the judgment of the Secretary, the application demonstrates that the safety of highway users will not be diminished.

(e) Development of Supplementary Safety Measures.—(1) In order to promote the quiet of communities affected by rail operations and the development of innovative safety measures at highway-rail grade crossings, the Secretary may, in connection with demonstration of proposed new SSMs, order railroad carriers operating over one or more crossings to cease temporarily the sounding of locomotive horns at such crossings. Any such measures shall have been subject to testing and evaluation and deemed necessary by the Secretary prior to actual use in lieu of the locomotive horn.

(2) The Secretary may include in regulations issued under this subsection special procedures for approval of new SSMs meeting the requirements of subsection (c)(1) of this section following successful demonstration of those measures.

(f) Specific Rules.—The Secretary may, by regulation, provide that the following crossings over railroad lines shall be subject, in whole or in part, to the regulations required under this section:

(1) Private highway-rail grade crossings.

(2) Pedestrian crossings.

(3) Crossings utilized primarily by nonmotorized vehicles and other special vehicles.

(g) Issuance.—The Secretary shall issue regulations required by this section pertaining to categories of highway-rail grade crossings that in the judgment of the Secretary pose the greatest safety hazard to rail and highway users not later than 24 months following the date of enactment of this section. The Secretary shall issue regulations pertaining to any other categories of crossings not later than 48 months following the date of enactment of this section.

(h) Impact of Regulations.—The Secretary shall include in regulations prescribed under this section a concise statement of the impact of such regulations with respect to the operation of section 20106 of this title (national uniformity of regulation).

(I) Regulations.—In issuing regulations under this section, the Secretary—

(1) shall take into account the interest of communities that—

(A) have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings; or

(B) have not been subject to the routine (as defined by the Secretary) sounding of a locomotive horn at highway-rail grade crossings;

(2) shall work in partnership with affected communities to provide technical assistance and shall provide a reasonable amount of time for local communities to install SSMs, taking into account local safety initiatives (such as public awareness initiatives and highway-rail grade crossing traffic law enforcement programs) subject to such terms and conditions as the Secretary deems necessary, to protect public safety; and

(3) may waive (in whole or in part) any requirement of this section (other than a requirement of this subsection or subsection (j)) that is not likely to contribute significantly to public safety.

(j) Effective Date of Regulations.—Any regulations under this section shall not take effect before the 365th day following the date of publication of the final rule.''

This final rule complies with the statutory mandate contained within section 20153 of title 49. The final rule retains the locomotive horn sounding requirement for trains that approach and enter public highway-rail grade crossings. (*See* rule § 222.21.) However, the rule contains exceptions for certain categories of rail operations and highway-rail grade crossings, in accordance with 49 U.S.C. 20153(c)(1). Section 222.33 of the rule provides that a railroad operating over a public highway-rail grade crossing may, at its discretion, choose not to sound the locomotive horn if the locomotive speed is 15 miles per hour or less and the train crew or appropriately equipped flaggers provide warning to motorists. FRA has determined that these limited types of rail operations do not present a significant risk of loss of life or serious personal injury. The rule also contains an exception for highway-rail grade crossing corridors that are equipped with SSMs at each public highway-rail grade crossing, in accordance with 49 U.S.C. 20143(c).

Highway-rail grade crossing corridors that have a Quiet Zone Risk Index at or below the Nationwide Significant Risk Threshold or the Risk Index With Horns have been deemed, by the Administrator, to constitute a category of highway-rail grade crossings that do not present a significant risk with respect to loss of life or serious personal injury or that fully compensate for the absence of the warning provided by the locomotive horn. Therefore, communities with grade crossing corridors that meet either of these standards may silence the locomotive horn within the crossing corridor, if all other applicable quiet zone requirements have been met. (*See* § 222.39.)

Section 20153(i) of title 49 requires FRA to ''take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings''. FRA has complied with this requirement in several ways. The rule allows Pre-Rule Quiet Zone communities to continue to silence the locomotive horn, without any additional safety improvements, if the Quiet Zone Risk Index is at, or below, *two times* the Nationwide Significant Risk Threshold and there have not been any relevant collisions within the quiet zone during the five years preceding April 27, 2005. (*See* § 222.41.) It should also be noted that Pre-Rule Quiet Zone communities can continue to silence the locomotive horn, without any additional safety improvements, if SSMs have been implemented at every public grade crossing within the quiet zone or if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold.) Additionally, the rule allows Pre-Rule Quiet Zone communities to take additional time (up to eight years from the effective date of the interim final rule) within which to implement safety improvements that will bring them into compliance with the requirements of the rule. This ''grace period'' has been included in the rule in order to comply with 49 U.S.C. 20153(i)(2), which requires FRA to provide ''a reasonable amount of time for [pre-existing whistle ban] communities to install SSMs''.

Section 20153(d) of title 49 states that ''* * * the Secretary may not entertain an application for waiver or exemption of the regulations issued under this section unless such application shall have been submitted jointly by the railroad carrier owning, or controlling operations over, the crossing and by the appropriate traffic control authority or law enforcement authority.'' Therefore, § 222.15, which governs the process for obtaining a waiver from the requirements of the rule, requires joint filing of waiver petitions by the railroad and public authority.

Section 222.55 addresses the manner in which new SSMs and ASMs are demonstrated and approved for use. Paragraph (c) of this section, which reflects the requirements contained within 49 U.S.C. 20153(e), specifically provides that the Associate Administrator may order railroad carriers operating over a crossing or crossings to temporarily cease sounding the locomotive horn at the crossing(s) to demonstrate proposed new SSMs and ASMs that have been subject to prior testing and evaluation.

Section 20153(f) of title 49 explicitly gives discretion to the Secretary as to whether private highway-rail grade crossings, pedestrian crossings, and crossings utilized primarily by nonmotorized and other special vehicles should be subject this regulation. FRA has decided to refrain from exercising

jurisdiction over crossings utilized primarily by nonmotorized and other special vehicles in this final rule. FRA has, however, exercised its jurisdiction, in a limited manner, over private grade and pedestrian crossings. Locomotive horn use at private grade and pedestrian crossings will be subject to the requirements of this rule, if the private grade or pedestrian crossing is located within a quiet zone. Sections 222.25 and 222.27 address the specific requirements that pertain to private grade and pedestrian crossings within quiet zones.

Section 222.7 contains a concise statement of the rule's impact with respect to 49 U.S.C. 20106 (national uniformity of regulation). This statement of the rule's effect on State and local law, which was required by 49 U.S.C. 20153(h), provides that the rule, when effective, will preempt most State and local laws that govern locomotive horn use at public highway-rail grade crossings. However, as stated in section 222.7(b), the rule will not preempt State and local laws governing locomotive horn use at Chicago Region highway-rail grade crossings where railroads were excused from sounding the locomotive horn by the Illinois Commerce Commission, and where railroads did not sound the horn, as of December 18, 2003. In addition, State and local laws that govern routine locomotive horn use at private grade and pedestrian crossings outside quiet zones will not be preempted.

Lastly, this rule complies with the statutory one-year delay requirement. Section 20153(j) of title 49 prohibits any regulations issued under its authority from becoming effective before the 365th day following the date of publication of the final rule. On December 18, 2003, FRA published the interim final rule on the use of locomotive horn at highway-rail grade crossings. Because the interim final rule had the same force and effect as a final rule, FRA delayed the effective date of the interim final rule for one year, in order to comply with 49 U.S.C. 20153(j) and to give public authorities sufficient time to prepare for quiet zone implementation before the rule's locomotive horn sounding requirements took effect. After reviewing approximately 1,400 comments on the interim final rule, FRA is now issuing a final rule that grants additional relief to States and local communities. The final rule will become effective on June 24, 2005 because the one-year statutory delay requirement was satisfied by delaying the effective date of the interim final rule.

3. Liability

FRA received a number of comments on the liability implications of the rule. The majority of these comments were concerned that the interim final rule would shift liability onto the public authority that creates a quiet zone. For example, Steve Stricker, Village Administrator for Burr Ridge, Illinois and Chairperson of the DuPage Mayors and Managers Conference, expressed concern at a February 2004 meeting about the potential municipal liability that may result from quiet zone creation. Mr. Stricker urged FRA to include a clear statement in the final rule that it will not change any federal or state laws or court decisions on municipal liability. Similar sentiments were expressed by John Kravcik, President of Western Springs, Illinois. The Village of Cornwall-on-Hudson, New York submitted comments expressing concern that by not addressing the liability of local communities that create quiet zones, the interim final rule shifted traditional railroad liability away from the party profiting from the use of the tracks and onto local governments. The City of Sacramento, California submitted comments suggesting that the rule be revised to state that quiet zone establishment cannot be used as the basis of a claim against a local government, provided the local government established the quiet zone in accordance with the provisions of the rule. Noting that the interim final rule exempts railroads from liability, the Village of Hinsdale, Illinois recommended that the final rule provide a similar exemption for public authorities or, in the alternative, state that the existing liability structure will not change. Along the same lines, Brian Krajewski, Mayor of Downers Grove, Illinois asserted that the rule needs to acknowledge in no uncertain terms that it is not intended to alter, in any way, the liabilities of any party covered by it. The City of Placentia, California submitted comments suggesting that the rule be revised to specify that it is intended to provide protection from liability for silencing the train horn to public authorities, as well as the railroad and train crew.

This final rule clearly covers the subject matter of locomotive horn sounding at public grade crossings, as well as locomotive horn sounding at private and pedestrian grade crossings that are located within a quiet zone. Therefore, with the exception of State and local laws governing locomotive horn sounding at the highway-rail grade crossings described in section 222.3(c), this final rule preempts all State and local laws that govern the sounding of locomotive horns at grade crossings located within duly established quiet zones. As stated in the interim final rule, FRA does not expect that future lawsuits will not arise over accidents within quiet zones, as such lawsuits may be due to factors other than the lack of an audible warning. However, this final rule is intended to remove failure to sound the horn, failure to require horn sounding, and prohibitions on sounding of the horn, at grade crossings located within duly established quiet zones, as potential causes of action. We expect that courts, following *Norfolk Southern* v. *Shanklin,* 529 U.S. 344 (2000) and *CSX* v. *Easterwood,* 507 U.S. 658 (1993), will conclude that this regulation substantially subsumes the subject matter of locomotive horn sounding at highway-rail grade crossings, as well as at private grade and pedestrian crossings that are located within a quiet zone. As a result, a federal standard of care defined by this rule will replace the standard of care that would otherwise apply at highway-rail grade crossings in each State, with the exception of those highway-rail grade crossings described in section 222.3(c). (Since the rule does not apply to the highway-rail grade crossings described in section 222.3(c), the standard of care required under State law will continue to apply at those crossings.) Local governments and railroads will benefit equally from the federal standard of care.

States also have the ability to assert sovereign immunity on behalf of local units of government within their borders, and many states have done so. It is not appropriate for the Federal government to unnecessarily disturb decisions States have made about whether local governments in their State should be immune from tort liability and FRA will not do so here.

FRA also received comments from local communities who expressed concern that railroads would require them to enter into indemnification agreements, as a prerequisite to the installation of additional safety measures at grade crossings that are located within a proposed quiet zone. The City of Arlington, Texas submitted comments stating that railroads may require municipalities to enter into indemnification agreements, if the rule is not revised to address municipal liability for quiet zone establishment. Therefore, the City of Arlington, Texas suggested that the rule be revised to prohibit railroads from requiring indemnification and hold harmless agreements as a condition of quiet zone creation. The DuPage Mayors and

Managers Conference also submitted comments recommending that the rule be revised to prohibit railroads from requiring a transfer of liability as a ''quid pro quo'' for safety improvement installation. The Village of Wilmette, Illinois submitted comments asserting that, with respect to SSMs, the rail carriers may require municipalities to agree to whatever terms they demand concerning liability. The West Central Municipal Conference and the Chicago Area Transportation Study submitted comments recommending that the final rule include language that prohibits railroads from requiring waivers of municipal immunity as part of any agreement, contract, or lease between railroads and municipalities.

On the other hand, FRA received comments from the railroad industry suggesting that the rule be revised to require public authorities to enter into indemnification agreements with railroads. The Fort Worth & Western Railroad, New Orleans & Gulf Coast Railroad, and the Idaho Northern & Pacific Railroad submitted comments recommending that the final rule require local communities to assume any increased liability that would result from quiet zone creation. The Fort Worth & Western Railroad submitted additional comments asserting that public authorities that establish a quiet zone should provide funding for any increase in railroad liability insurance premiums that may result from railroad operations within quiet zones. Caltrain submitted comments asserting that the sponsoring public authority should be required to indemnify railroads and hold them harmless from claims that arise within the quiet zone.

FRA has refrained from adding language to the final rule that would expressly prohibit the railroad industry from requiring public authorities to enter into indemnification and hold harmless agreements, as a condition of obtaining railroad consent to the installation of grade crossing safety improvements within proposed quiet zones. The provisions contained within, as well as the overall legality of, indemnification and hold harmless agreements between railroads and local communities are largely governed by State contract law and FRA has been given no general charge to adjust these interests.

In fact, FRA is not persuaded that railroads will, in most cases, enjoy significant power that could be used inappropriately in this context. State and local governments retain authority to determine appropriate traffic control devices and roadway improvements at highway-rail grade crossings. In a number of cases, State agencies will be able to order installation of automated warning systems, such as four-quadrant gates, even on county and local roadways. Use of channelization techniques may require little or no cooperation from the railroad and, in many cases, photo enforcement can likely be accomplished using existing interconnections between crossing warning systems and traffic signals.

Further, in this context, railroads often can provide a unique perspective related to crossing improvements. For particular applications, railroads may be able to point out important public and private benefits from employing basic traffic channelization in lieu of more technically complex and maintenance-hungry four-quadrant gate systems.

4. Partial Quiet Zones

Commenters requested clarification of the rule's effect on crossings at which horns are silenced for a portion of the day (typically during nighttime hours). The final rule thus addresses the continuation and establishment of such ''partial quiet zones.''

Under the final rule, communities with Pre-Rule Partial Quiet Zones (see § 222.9 for the complete definition of ''Pre-Rule Partial Quiet Zones'') must comply with Pre-Rule Quiet Zone standards, in order to continue existing restrictions on the use of the locomotive horn. However, Pre-Rule Partial Quiet Zones that do not qualify for automatic approval under § 222.41(a) will be given additional time within which to come into compliance, provided the public authority complies with the requirements set forth in §§ 222.41(b) and 222.43. Communities that wish to convert their pre-existing partial whistle bans into 24-hour quiet zones will, however, be required to comply with New Quiet Zone standards. (Please refer to the Section-by-Section Analysis of § 222.41 for further information about Pre-Rule Partial Quiet Zone requirements.)

Communities that had partial whistle bans in place as of December 18, 2003 (the interim final rule publication date), but after October 9, 1996, may qualify for Intermediate Partial Quiet Zone status. (Please refer to § 222.9 for a definition of Intermediate Partial Quiet Zones.) Intermediate Partial Quiet Zones may continue existing restrictions on the use of the locomotive horn for one year. However, Intermediate Partial Quiet Zones must comply with New Quiet Zone standards by the end of the one-year grace period, in order to prevent the resumption of routine locomotive horn sounding at public grade crossings within the former quiet zone. (Please refer to the Section-by-Section Analysis of § 222.42 for further information about Intermediate Partial Quiet Zone requirements.)

Communities that wish to create a New Partial Quiet Zone will be required to comply with New Quiet Zone standards. Unless a waiver is granted, all New Partial Quiet Zones must restrict locomotive horn sounding between the hours of 10 p.m. and 7 a.m. This requirement will ensure consistent application of locomotive horn restrictions within New Partial Quiet Zones, which should minimize confusion for the locomotive engineer.

5. Rule Changes

This brief overview of the changes that have been made in the Final Rule is provided for the reader's convenience. Because this section merely provides an overview, it should not be relied upon for a comprehensive discussion of all final rule changes. Indeed, this full document should be read together with the previous documents issued in the proceeding. Inasmuch as the Interim Final Rule and Notice of Proposed Rulemaking contained extensive discussion of both the background of the issues involved in this rulemaking and the rationale behind decisions relating to those issues, FRA emphasizes that this Final Rule should be read in conjunction with the Interim Final Rule and Notice of Proposed Rulemaking. Unless the positions and rationale expressed in those documents have explicitly changed in the subsequent rulemaking documents, the reader should understand that those positions and rationale remain those of FRA.

Summary of Changes to the Interim Final Rule

- The final rule clarifies FRA's position that it is not intended to preempt administrative procedures required under State law regarding grade crossing warning system modifications and installations. (*See* § 222.7 for more information.)
- Surface-mounted tubular delineators have been removed from the list of approved Supplementary Safety Measures (SSMs). Tubular delineators may only be used as SSMs under the final rule if they have been affixed to raised longitudinal channelizers. (See appendix A for more information.)
- The final rule provides a one-year grace period to comply with New Quiet Zone standards for communities with pre-existing whistle bans that were in effect on December 18, 2003, but were adopted after October 9, 1996. These communities are considered

''Intermediate'' Quiet Zones under the final rule. (*See* § 222.42 for more information.)

• The final rule addresses quiet zones that prohibit sounding of horns during a portion of the day. These are referred to as Partial Quiet Zones.

• The final rule requires diagnostic team reviews of pedestrian crossings that are located within proposed New Quiet Zones and New Partial Quiet Zones. (*See* § 222.27 for more information.)

• The final rule requires quiet zone communities to retain automatic bells at public highway-rail grade crossings that are subject to pedestrian traffic. (*See* § 222.35(d) for more information.)

• The definition of ''public authority'' has been revised under the final rule to include only those public entities who are responsible for traffic control and law enforcement at public highway-rail grade crossings. (*See* § 222.9 for more information.)

• The final rule extends ''recognized State agency'' status to State agencies who wish to participate in the quiet zone development process. (*See* § 222.17 for more information.)

• The final rule contains a 60-day comment period on quiet zone applications. (*See* § 222.39(b) for more information.)

• The final rule requires public authorities to provide notification of their intent to create a New Quiet Zone. During the 60-day period after the Notice of Intent is mailed, comments may be submitted to the public authority. (*See* § 222.43(b) for more information.)

• The final rule provides quiet zone risk reduction credit for certain pre-existing SSMs. (*See* appendix A for more information.)

• The final rule provides quiet zone risk reduction credit for pre-existing modified SSMs. (*See* appendix B for more information.)

• The final rule contains a new category of ASMs that addresses engineering improvements other than modified SSMs. (*See* appendix B for more information.)

• The minimum sound level for wayside horns has been reduced to 92 dB(A). (*See* appendix E for more information.)

6. E.O. 15 Status

Emergency Order 15, issued in 1991, requires the Florida East Coast Railway Company to sound locomotive horns at all public grade crossings. The Emergency Order preempted State and local laws that permitted nighttime bans on the use of locomotive horns. Amendments to the Order did, however, permit establishment of quiet zones if supplementary safety measures were implemented at every crossing within a proposed quiet zone. The supplementary safety measures specified in the Order, although similar, are not the same as those contained in this final rule. FRA recognizes that the SSMs, and the conditions on their implementation contained in this rule, provide communities substantially greater flexibility in creating quiet zones than those in the Order.

Therefore, the provisions of this final rule will apply to all grade crossings within the State of Florida when E.O. 15 is rescinded. FRA conducted a public conference on April 15, 2005, and solicited comments on the appropriate excess risk estimate that should be applied when routine use of the locomotive horn is prohibited at highway-rail grade crossings that are currently subject to E.O. 15. FRA intends to amend the final rule to specifically address this issue, after considering comments and testimony provided at the public conference from interested parties.

7. Chicago Regional Issues

The six-county Chicago Region is host to the largest rail terminal in the United States, and it accounts for the biggest concentration of ''whistle bans'' and associated casualties in the nation. Chicago communities and industries have grown up with, and around this extensive rail network, while the entire Chicago metropolitan area has benefitted from an extensive commuter rail system established by the State and funded by the State, region, and Federal government. As stated in the interim final rule, the unique aspects of locomotive horn sounding at public grade crossings within the Chicago Region have contributed to the need for different treatment for those crossings that have been subject to pre-existing whistle bans.

Excess Risk Estimate for Gated Crossings Subject to Existing Whistle Bans in the Chicago Region

In the interim final rule, FRA explained at some length why the agency had decided to apply an excess risk estimate of 17.3% to Chicago Region gated crossings. We noted that Chicago Region no-whistle gated crossings have a statistical profile that is distinctly different from gated whistle ban crossings in the rest of the Nation. We explained that analysis conducted for FRA by a statistical firm, Westat, Inc., arrived at the 17.3% excess risk estimate for gated crossings in contrast to a national excess risk figure of 66.8%, but that the estimate for the Chicago Region was not statistically significant at conventional levels. We further noted qualitative reasons why the lower estimate appeared to make sense (*e.g.*, discretionary selection by railroads of crossings subject to no-whistle policies, high train counts supporting strong motorist expectations concerning the presence of a train, Metra's emphasis on locomotive conspicuity measures). Commenters on the interim final rule have continued to question FRA's position on this issue. Commenters outside the Chicago area seek the benefit of their own regional estimates (which are not achievable given the smaller number of relatively homogenous crossings available for analysis), and commenters from Chicago claim that the lower estimate is too high (and should be set at 0%, requiring no safety offset for loss of the train horn as an auditory warning to the motorist).

In response to the IFR, the Village of Arlington Heights, City of Chicago, Northwest Municipal Conference, Metropolitan Mayors Caucus, and the Chicago Area Transportation Study (''Chicago Region commenters'') submitted a study by TransInfo LLC and the University of Illinois at Chicago (''TransInfo-UIC study''), which concluded that ''* * * there is no reason to believe that in northeastern Illinois, banning the sounding of horns increases the chance of collisions at gated highway-rail crossings.'' The TransInfo-UIC study noted that the 17.3% excess risk estimate was not statistically significant at conventional levels. Given this lack of significance, the TransInfo-UIC study asserted ''* * * one must then accept the hypothesis of no difference in the effects of a ban on horn soundings * * *'' Using the same data set as FRA's contractor, Westat, Inc., TransInfo LLC and the University of Illinois at Chicago developed alternative statistical models. Their seemingly preferred model produced a −26.4% effectiveness rate (compared to +17.3% from the Westat model) that was statistically significant at the conventional 5% level. TransInfo-UIC also raised questions about possible collinearity in the Westat model.

FRA provided the TransInfo/UIC study to its contractor, Westat, for analysis. While acknowledging that its estimate lacks statistical significance at conventional levels (a point made explicitly by Westat in reporting its 2003 findings), Westat indicated that this does not mean that one must accept the hypothesis of no difference in collision rates between horn and no-horn crossings. Westat noted that ''[i]n a statistical study, *absence of evidence*

against a hypothesis is not conclusive evidence for the hypothesis. * * * The hypothesis may be true, or false, in the absence of evidence against it, we simply do not know.'' After reviewing the TransInfo-UIC seemingly preferred model, Westat found that it has biased residuals and that it systematically underpredicts collisions for the Chicago area ban crossings.

In 2004, Westat developed a model that tested the sensitivity of the Westat 2003 model which was used to develop the interim final rule. This 2004 model supports earlier findings and the FRA conclusion that collision rates at gated crossings where train horns are not routinely sounded in the Chicago area are higher than at gated crossings in the rest of the nation (except Florida) where horns are routinely sounded.

Westat compared the TransInfo-UIC, Westat 2003, and Westat 2004 models and found that the two Westat models are superior for estimating the effect of train horns at gated crossings in Chicago. Both Westat models fit the data better and avoid the biased residuals found in the TransInfo-UIC model. Since there is some evidence of numerical instability in the Westat 2004 model, Westat prefers the Westat 2003 model. Westat also tested the Westat 2003 model for collinearity and found that (1) since approximately 76 percent of the effect of the no-horn parameter was independent of the other model parameters, there was no confirmation of collinearity, (2) although there was evidence of some possible collinearity among some of the parameters, there was no such evidence pertaining to the no-horn parameter, and (3) the test statistic for assessing an adverse effect of collinearity for the no-horn parameter was well below the threshold for collinearity, therefore collinearity did not pose a serious threat to estimated effectiveness of train horns. As a result, Westat concluded that its 2003 model provided the best representation of excess risk among the models applied. FRA analysts agreed that the TransInfo-UIC model did not perform suitably to explain crossing risk in the region. Westat further concluded that the sample size for the Chicago area is not large enough to derive consistent statistical results across different statistical models.

Detailed comments by Chicago jurisdictions further questioned the interim final rule's statistical basis. For example, the Metropolitan Mayors Caucus, acting in concert with the City of Chicago and the Chicago Area Transportation Study (CATS), stated that, ''The FRA's data quality and model use is inappropriate for setting policy.'' The Mayors Caucus filing (FRA–1999–6439–3770) called attention to direction provided in February 2002 by the Office of Management and Budget to develop and implement data quality standards. The commenters specifically questioned the quality of the National Highway-Rail Crossing Inventory, which is maintained by FRA on behalf of States, railroads and other users. The Inventory was used to generate risk estimates for use in the Westat and TransInfo-UIC studies.[1]

FRA recognizes that, in a voluntarily-populated database that provides information for over 149,000 public at-grade crossings, there are individual errors. For instance, in conducting additional review of Chicago Region crossings equipped with flashing lights only, FRA recently determined that several of them have been upgraded by the addition of gates. State authorities and railroads apparently had not reported the improvements to FRA's contractor. This is the typical type of problem encountered when a significant minority of records are simply out of date.

The commenters suggest that FRA ''correct the data'' before undertaking further analysis. FRA meets regularly with railroads and with State agencies responsible for highway-rail crossing safety. FRA strongly encourages submissions from these parties, which typically have more recent data available for their own purposes. The U.S. Department of Transportation has four times sent legislation to the Congress that would have made regular updating of the inventory mandatory on both the State agencies (which are generally recipients of substantial Federal-aid highway funds) and the railroads. The first such legislation was transmitted on July 26, 1999. The Congress has not taken final action on this legislation, although a virtually identical provision was included in S. 1402, the Federal Railroad Safety Improvement Act, which passed the Senate on November 25, 2003, but failed of final passage with the adjournment of the 108th Congress in December of 2004. Short of mandatory reporting, FRA has no practical means of re-creating the national inventory in a manner acceptable to Chicago Region commenters in this proceeding.

[1] This criticism was repeated in an October 5, 2004, letter from the CATS Council of Mayors Executive Committee to the Department of Transportation's Inspector General and in a January 26, 2005, letter from eleven Members of Congress from Illinois to the Director, Office of Management and Budget. These documents are filed in the public docket of this proceeding as Document nos. FRA–1999–6439–3918 and FRA–1999–6439–3922, respectively.

FRA is required by law to issue a final rule requiring use of the train horn. The agency is not required to provide exceptions to use of the train horn, except to the extent that it is useful to take into consideration the interests of communities with pre-existing bans. Nevertheless, FRA has aggressively sought from the beginning of this effort—including before enactment of any requirement to consider the interests of pre-rule ban communities—to craft suitable exceptions. Providing for quiet zones is a goal embraced by virtually all commenters in this proceeding, and in order to do it fairly and effectively, FRA must utilize the best data available.

FRA has proceeded with development of this rulemaking with the belief, founded on daily use of Inventory information for a variety of purposes, that while some of the data are older than would be desired, there are not patterns in the inventory that would create biased results as between train horn crossings and whistle ban crossings or in any regional analysis. In making their data quality argument, the Chicago Region commenters do not allege specific bias or suggest a reason why there could be such a bias. If FRA cannot rely upon the Inventory data for purposes of this rulemaking, then FRA would lack a rational basis for permitting any exceptions to the statutory command that train horns sound at highway-rail grade crossings. Nevertheless, FRA agrees that, when dealing with a comparative safety performance difference as small as the one at issue for gated crossings in the Chicago Region, and given the poor results for statistical significance and model fit for the various approaches, it is wise to explore whether there may be any differences in the characteristics of the Inventory data that might inadvertently introduce bias into the analysis.

FRA had noted during the 10-year pendency of this rulemaking that much of the data for the Chicago area and the balance of Illinois was badly out of date. FRA encouraged the State to update the information, and the State did make a major effort to update average annual daily traffic in 2003. Because of the study period (1997 through 2001) and the methodology used for retrieval of inventory information, however, most of this updated information was not utilized in the Westat or Transinfo-UIC analysis (*i.e.*, the updates occurred late in the study period or after its close). (The updated information has been used in generating corridor risk estimates and is accessed by the quiet zone web calculator.) FRA concurs that it is

prudent to inquire further into whether known data quality issues—which themselves cannot be effectively addressed by FRA without cooperation from other parties—have the potential to adversely affect the Chicago Region analysis.

Therefore, FRA will arrange for an independent peer review of its conclusion on this issue before issuing an amendment to this final rule which will address Chicago Region crossings. FRA will respond to the ''peer review report'' and place a copy of its response in the public docket.

Pending completion of this Chicago Region re-analysis, FRA is excepting existing Chicago Region no whistle crossings from the requirement to sound the train horn. It is FRA's intention to leave those crossings—and those crossings alone—subject to existing Illinois State Law pending further rulemaking. Existing no-whistle excusals will stand, and railroads will remain free to sound the horn where they elect to do so (as is the case today).

In doing so, FRA notes that the most active challenge made by the Chicago authorities has to do with the 17.3% excess risk estimate for gated crossings. FRA pointed out in the interim final rule that there are an insufficient number of non-gated crossings in the region to calculate a special excess risk rate for them. Nor, in the case of many of the non-gated crossings, would all of the same considerations presented by Chicago Region commenters apply (*e.g.*, most of the non-gated crossings are on tracks used by fewer trains, some are on lines exclusively used for freight service). Nevertheless, FRA is including those non-gated crossings in the temporary exclusion provided in this final rule. The following considerations support this approach:

1. Some of the subject crossings are within logical pre-rule quiet zones comprised principally of gated crossings. It is not reasonable to ask public authorities to move forward with improvement of individual crossings outside the context of planning for the corridor. Nor would it in every case be cost effective, in comparison with a corridor approach, to do so.

2. The total risk associated with these crossings is not high. There are fewer than 10 non-gated crossings that would fall in pre-rule quiet zones requiring some form of action to compensate for absence of the train horn (based on current risk indices and relevant accidents in the past 5 years). Several of these are on lines with moderate speeds or very modest annual average daily traffic and have individual risk indices below the NSRT. The Illinois Commerce Commission has been aggressive in adding gates at the higher-risk crossings over the past several years. There is no reason to believe that this will not continue.

3. FRA expects to conclude further data analysis regarding the Chicago Region gated crossings as soon as possible and to conclude any necessary final rule amendment as quickly thereafter as feasible, given the need for review and clearance of the amendment. Pre-rule quiet zones are expected to be brought in full conformity with this final rule within 5 to 8 years, depending upon actions taken by the State to support local communities. The further delay associated with temporarily excepting these non-gated crossings from the requirement to sound the train horn will not be significant.

FRA does not perceive any reason to conduct an entire new series of analyses for the balance of the Nation. Westat's results for the Nation were statistically significant with good model fit. Given that whistle bans outside of the Chicago Region involve inventory records from 24 States, FRA cannot conceive any condition under which the Inventory records for whistle ban crossings would be of materially different quality (currency and accuracy) than for train horn crossings.

FRA calls attention to the fact that two important sets of data have not been effectively challenged as to their quality: Data regarding highway-rail crossing incidents (which is filed under penalty of law); and the identity of Chicago Region crossings (which has been meticulously studied and agreed upon by the Illinois Commerce Commission and FRA).

FRA further notes that there is likely no transportation safety database that is free of imperfections. Use of imperfect data is greatly to be preferred over disregarding of data. But it is important not to rely excessively on data whose characteristics are poorly understood. Chicago Region commenters in this rulemaking have challenged FRA to take another look at the data, and FRA will do so.

Other Regional Claims

FRA also received comments from communities in Massachusetts and Maryland requesting differential treatment under the final rule, based on the characteristics of rail operations in the Northeast. Ledyard McFadden of Beverly Farms, Massachusetts accused FRA of discriminatory implementation of the rule, given the ''specific exception'' accorded to the Chicago Region based on extensive and expensive statistical analysis provided by that region. Noting that the Chicago Region was afforded ''a much lower effectiveness rate than the rest of the nation,'' the City of Cumberland, Maryland asserted that the discrepancy should be resolved using accurate data or the rest of the nation should also be accorded the lower excess risk estimate. Massachusetts Congressman John Tierney submitted comments asserting that a number of his constituents ''perceive discriminatory implementation of the rule'' based on the rule's specific exception for the greater Chicago area. Questioning why similar analysis was not performed in the Northeast, particularly along the commuter-only rail lines of Boston's North Shore, Congressman Tierney asserted that the rule should not be implemented until adequate regional analyses have been completed.

FRA is not able to provide for separate regional estimates of excess risk. Statistically, there are sound reasons for assigning a horn effectiveness rate to gated crossings in the Chicago area that is lower than that for gated crossings in the rest of the country. Westat estimated an effectiveness rate for gated crossings for the Chicago Region of 17.3% and an effectiveness rate for gated crossings in the rest of the nation (excluding Florida) of 66.8%. Associated with these point estimates are 95% confidence intervals.[2] Neither point estimate is contained in the 95% confidence interval of the other. Based on this, Westat noted ''the ban effect in the Chicago area is different from the ban effect in the rest of the nation.'' Had the point estimate for the Chicago Region been within the 95% confidence interval for the rest of the nation (excluding Florida), there would have been some reason to believe that the ban effect in the Chicago Region was not necessarily different from that in the rest of the nation (excluding Florida).

Westat performed a statistical analysis at FRA's direction on no-whistle crossings in Wisconsin and the Chicago Region. These regions were selected for regional statistical analysis because (1) commenters argued that safety performance at whistle ban crossings is different than in the nation at large, (2) the statute provides a basis for addressing their concerns, and (3) they contained a sufficiently large number of no-whistle crossings that might support

[2] A 95% confidence interval for an estimate provides a range over which we are highly confident the true value exists. If we could sample the Chicago area and the rest of the nation many times and compute corresponding confidence intervals, the true value would be between the computed confidence intervals about 95% of the time.

comparison with national crossing data. Given the relatively low number of whistle ban crossings in Northeast Massachusetts and Maryland, FRA was not able to perform a regional statistical analysis of those crossings that would yield reliable conclusions.

It is unusual for FRA to tailor a rule to the characteristics of one or more regions of the country because of the statutory command that ''[l]aws, regulations, and orders related to railroad safety * * * shall be nationally uniform to the extent practicable.'' 49 U.S.C. 20106. In this case, FRA is authorized by statute to treat communities with pre-existing quiet zones differently. Congress directed FRA, in issuing this rule, to ''take into account the interest of communities that (A) have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings; or (B) have not been subject to the routine * * * sounding of a locomotive horn at highway-rail grade crossings.'' 49 U.S.C. 20153(i)(1). FRA must, however, have a rational basis for doing so. As discussed above and elsewhere in this Final Rule and the Interim Final Rule, the Chicago region presented enough data points for FRA to rationally distinguish safety behavior at no-whistle highway-rail grade crossings in the Chicago region from those in the rest of the country. The record does not contain sufficient data for Northeast Massachusetts or Cumberland, Maryland to enable FRA to make similar rational distinctions for them. Nor have whistle bans in Massachusetts or Maryland been subject to discretionary selection (*i.e.*, there is no reason to believe that relatively safer crossings were selected for inclusion in ban areas).

If a court should conclude that FRA lacks a rational basis for treating the Chicago region differently than the rest of the nation, the Chicago region would then be required to meet the national standard. Such a ruling would not extend the benefit of the 17.3% excess risk estimate to any other region.

FRA notes the possibility that the marginal effectiveness of the train horn might be smaller in a situation such as Northeast Massachusetts where the following conditions exist: Predominance of commuter rail service (scheduled service, shorter trains), moderate speed over crossings adjacent to stations, and absence of heavy freight service on the rail lines. However, the Massachusetts Bay Transportation Authority provides express, as well as local, service at a number of crossings proximate to station locations that present significant hazards. Although the small number of crossings and other data points makes it impractical to derive special estimates for this region, FRA remains open to dialogue regarding circumstances in individual communities in the context of waiver proceedings.

This statutory exception (49 U.S.C. 20153(i)(1)) to the requirement for national uniformity may be seen as consistent with the policy behind the national uniformity requirement because, while it yields varying requirements for communities in different circumstances, the requirements for railroads are nationally uniform. The policy is aimed at facilitating transportation over the general system of railroad transportation by assuring that railroads face the same requirements nationwide—put another way, the railroad system cannot function efficiently if the rules for operation change across local or state jurisdictions. Railroads are required nationwide to sound the train horn at every highway-rail grade crossing except those in quiet zones. The standards for railroad operations remain the same nationwide without regard to regional variations in the standards local governments must meet in order to establish quiet zones.

As noted in the interim final rule, FRA investigated a number of options in addressing Chicago area issues. (*See* section 14 of the preamble to the interim final rule, ''Chicago Regional Issues,'' 68 FR 70611.) FRA noted then, and reiterates here that the option of using national averages for the entire Nation, including Chicago, would have been employed by FRA if the Chicago Regional data were not available or their use inappropriate. FRA could have rationally decided that the limited significance of the Chicago Region statistical conclusions did not require reliance on those conclusions. This would have resulted in a fully functional and appropriate final rule consistent with the Act; a rule FRA would not have hesitated issuing. However acceptable this option was, it would have necessitated according little weight to a sizable body of testimony from the Chicago Region together with statistical analysis and qualitative knowledge of the Chicago Region's unique characteristics.

Excess Risk Estimate for New Quiet Zones

Other commenters from the Chicago Region assert that the 17.3% excess risk estimate attributed to gated crossings subject to whistle bans in the Chicago Region should be applied to all public grade crossings within the Chicago Region. Noting that gated crossings subject to whistle bans are often located on the same rail lines as other grade crossings not subject to existing whistle bans, the Town of Riverside, Illinois and the City of Elmhurst, Illinois asserted that it was illogical to suggest that motorists consciously exhibit riskier behavior at one gated crossing over another. The Village of Northbrook, Illinois asserted that differential treatment of public crossings implies that drivers need the audible cue at some crossings, but not at others, in order to achieve the same level of safety. However, drivers in northeastern Illinois regularly cross multiple crossings and are not cognizant of which crossings are subject to whistle bans and which are not. The Village of Buffalo Grove asserted that different standards should not apply to adjacent crossings along the same rail line, while George Pradel, Mayor of Naperville, Illinois asserted that there is no difference in motorist behavior at such crossings.

FRA is not persuaded by the suggestion that the lower estimate of excess risk associated with gated no-whistle crossings in Chicago is applicable to other crossings. As FRA explained in the interim final rule, one of the most important explanatory factors supporting a reduced estimate of excess risk for gated no-whistle crossings in Chicago is discretionary selection. Railroads have determined that they should sound the horn at a clear majority of crossings in the region where the Illinois Commerce Commission excused use of the horn because of the risk that the railroads perceive at those crossings. Factors that drive such decisions may include accident history, reports of ''near hits'' by train crews, poor crossing geometry, poor sight distances on one or more approach, absence of active law enforcement, and other factors. It is, of course, possible that the excess risk associated with silencing the train horn at other crossings in Chicago may be less than the national average due to a variety of factors. However, FRA has no principled basis for deriving such an estimate. FRA notes that Illinois authorities have not seen fit to impose mandatory train horn bans at these additional crossings, and FRA is unwilling to do so except on the basis required of all New Quiet Zones nationwide.

Chicago Region Proposed Alternate Crossing Safety Program

The Village of Arlington Heights, City of Chicago, Northwest Municipal Conference, Metropolitan Mayors Caucus, and the Chicago Area

Transportation Study (''Chicago Region commenters'') submitted comments asserting that their whistle ban crossings should qualify for the statutory exception from the rule's locomotive horn sounding requirements found at 49 U.S.C. 20153(c)(1)(C). This exception can be applied by FRA to those categories of highway-rail grade crossings that do not present a significant risk with respect to loss of life or serious personal injury. In support of their assertion, the Chicago Region commenters submitted a study by TransInfo LLC and the University of Illinois at Chicago (''UIC''), which concluded that ''* * * based on FRA data, there is no reason to believe that in the Chicago Area banning the sounding of horns increases the chance of collisions at gated public highway-rail grade crossings.''

In the alternative, the Chicago Region commenters submitted a Proposed Alternative Crossing Safety Program to FRA for consideration. Under this proposed program, FRA would delegate its authority over quiet zone development and implementation to ''an appropriate State agency with railroad safety oversight responsibilities.'' While FRA would monitor the effectiveness of the regional quiet zone program, the State agency would establish acceptable safety thresholds, designate quiet zone status, and enforce railroad compliance within quiet zones. For example, the Chicago Region would establish a safety threshold for quiet crossings of no more than three ''relevant'' collisions over a five-year period. If this threshold was ever exceeded at a quiet crossing, the State agency could immediately impose routine horn sounding at the crossing.

As stated above, FRA provided the TransInfo/UIC study to its contractor, Westat, Inc., a nationally respected statistical research firm, for analysis. After reviewing the study, Westat concluded that the model used by TransInfo/UIC produced biased estimates. Westat also concluded that its original model, which estimated a 17.3% risk increase at whistle ban crossings in the Chicago Region, constituted the best estimate of excess risk available. Given this increase in risk, FRA has not, as of this date, applied the statutory exception to whistle ban crossings in the Chicago Region. However, FRA has excepted pre-rule no-whistle crossings in the Region from the requirement to sound the train horn pending further analysis.

In addition, FRA has not adopted the Proposed Alternative Crossing Safety Program. FRA cannot delegate its statutory authority to prescribe requirements for quiet zone development and implementation in the wholesale manner recommended by the Chicago Region commenters. FRA also finds the proposed safety threshold of no more than three ''relevant'' (as defined by the commenters) collisions over a five-year period to be inadequate, particularly in light of the fact that the Program would exclude collisions in which the driver intentionally drives around or under activated gates from the definition of ''relevant collision.'' Aggressive motorist behavior is part of the risk that this rule seeks to counter. It is simply not the case that a motorist who would drive around or under a gate cannot be deterred. Absent suicidal behavior (suicides are not included in FRA safety data), motorists can often be persuaded by a warning that is urgent and clearly associated with the imminent arrival of the train at the crossing. To the extent that State policy overlooks this fact, it fails to address the full range of risk addressed by this rulemaking.

Nonetheless, within the framework of a uniform national policy, State agencies can make substantial contributions to the successful implementation of quiet zones. In response to comments, FRA has added a new provision to the final rule that provides a greater role for State agencies in the quiet zone development process. This provision will allow State agencies to submit applications for ''recognized State agency'' status, under which the agency can choose to participate as a partner throughout the quiet zone development process. FRA envisions that ''recognized State agencies'' could serve as clearinghouses for proposed quiet zones, by coordinating the quiet zone development process, designating crossings that are eligible for Pre-Rule Quiet Zone and Intermediate Quiet Zone status, and/or participating in diagnostic team reviews of crossings. Therefore, FRA encourages State agencies who, like the Illinois Commerce Commission, would like to take a proactive role in the quiet zone development process to submit applications for ''recognized State agency'' status.

Section-by-Section Analysis

Section 222.1 What Is the Purpose of This Regulation?

This section was not revised in the final rule. Noting that the interim final rule already addressed private crossings, the AAR submitted comments recommending the revision of this section to state that the purpose of this rule is to provide for safety at highway-rail grade crossings and pedestrian crossings. However, the final rule addresses private and pedestrian crossings to the extent that they are located within quiet zones. Given the limited number of private and pedestrian crossings affected by the rule, FRA has not expanded the scope of this section.

Section 222.3 What Areas Does This Regulation Cover?

Paragraph (a) of this section has not been revised. A new paragraph (b) has been added to this section. In the course of drafting any rule, and especially when drafting a rule of this complexity and one involving a number of sometimes competing interests, FRA makes a number of difficult decisions. In doing so, FRA makes every attempt to construe and implement statutory requirements appropriately. Accordingly, paragraph (b) has been added to this section to expressly indicate the intent of FRA that the provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the intent of FRA that the remaining provisions shall continue in effect.

Due to the uncertainty associated with the excess risk estimate of silencing the locomotive horn at highway-rail grade crossings in the Chicago Region where horn sounding was excused by the Illinois Commerce Commission and where railroads have implemented no-whistle policies, paragraph (c) has been added to exclude those highway-rail grade crossings from the scope of the final rule pending completion of the Chicago Region data re-analysis discussed in ''Chicago Regional Issues'' (Supplementary Information, section 7).

Section 222.5 What Railroads Does This Regulation Apply To?

This section describes the railroads to which this regulation applies. The regulation applies to every railroad with a number of listed exceptions. The regulation does not apply to (1) railroads exclusively operating freight trains only on track which is not part of the general railroad system of transportation; (2) passenger railroads that operate only on track which is not part of the general railroad system of transportation and that operate at a maximum speed of 15 miles per hour over public grade crossings; and (3) rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Paragraph (a) of this section was not revised in the final rule. However,

paragraph (b) of this section was revised in response to comments received from the Association of Railway Museums. Noting that the interim final rule would require tourist and excursion railroads to limit their operating speeds to 15 miles per hour over all railroad trackage, the Association of Railway Museums recommended that the rule be revised to exclude passenger railroads that operate on track which is not part of the general railroad system of transportation and that operate at a maximum speed of 15 mph over public grade crossings. The Association of Railway Museums asserted that precedent for this recommendation could be found in 49 CFR 229.125, which requires operative auxiliary lights on each lead locomotive operating at a speed greater than 20 mph over public grade crossings. After considering these comments, FRA determined that passenger operations that operate on track which is not part of the general railroad system of transportation could be exempted from the rule's locomotive horn sounding requirements, provided these operations are limited to 15 mph over public highway-rail grade and pedestrian crossings. Therefore, FRA has revised paragraph (b) accordingly.

Paragraph (c) of this section has not been revised. The California Public Utilities Commission (''California PUC'') submitted comments asserting that the rule should be revised to exclude rapid transit operations that share highway-rail grade crossings with conventional operations but do not share trackage. In its comments, the California PUC noted that rapid transit operations exhibit different risk patterns and hazards than conventional rail operations. For instance, rapid transit operations feature shorter consist lengths, different overall visibility profiles, and greater braking abilities. If the rule is applied to rapid transit operations that share highway-rail grade crossings with conventional operations, rapid transit operations would be required to sound the horn more frequently at crossings and to use a much louder horn than is being currently used. FRA notes that § 229.129 continues to exclude all rapid transit operations from the audible warning sound level requirements. Therefore, rapid transit operations that share highway-rail grade crossings with conventional operations will not be required to use louder horns to provide an audible warning at public highway-rail grade crossings. However, rapid transit operations that share highway-rail grade crossings with conventional operations must file a waiver under § 222.15 to obtain relief from the application of Part 222. FRA may then grant relief, depending on the underlying circumstances of each case.

New Jersey Transit Corporation (''NJ Transit'') also submitted comments requesting clarification of the rule's applicability to light rail systems that operate on the general railroad system pursuant to an FRA-approved Temporal Separation Plan. NJ Transit urged FRA to exempt these light rail operations from the application of the rule based on the distinct nature of light rail equipment (*i.e.*, light rail vehicles weigh less than conventional rail equipment and have superior stopping capabilities).

FRA also received comments from individuals in Riverton, New Jersey who requested that the rule be revised to exempt light rail operations from the scope of the rule. Mark Schneider submitted comments requesting that the final rule be revised to exclude the light rail operation in the historic town of Riverton, New Jersey, which, he states, is one of five light rail operations in the nation that can ''stop on a dime.'' Catherine Wheelhouse, owner of the Thomas Margaret Fine Art Gallery, submitted comments asserting that light rail operations should be evaluated under a different set of criteria because these operations consist of slower moving vehicles that provide a very large area of visibility for the operator.

Given the unique characteristics of individual light rail operations and the fact that freight operations over shared crossings will generally sound the horn (creating motorist expectations that should be considered in planning for safety), FRA has not provided an exemption for all light rail operations in the final rule. However, FRA would be willing to consider any waivers filed under § 222.15, for relief from the requirements of this part, on a case-by-case basis. These requests can be considered within existing ''shared use'' dockets and after consultation with the Federal Transit Administration and State Safety Oversight agencies.

The Town of Manchester-by-the-Sea, Massachusetts also submitted comments recommending that the exemption set forth in paragraph (c) be expanded to cover commuter rail service. Noting that its commuter rail service consists of short passenger trains, generally not longer than seven or eight cars, the Town of Manchester-by-the-Sea asserted that motorists are not tempted to ''beat'' the train to the crossing and are willing to wait for it to travel through the crossing. The Town of Manchester-by-the-Sea also drew similarities between commuter rail service and rapid transit operations, as both types of rail service operate in densely populated areas. FRA has not, however, revised paragraph (c) to cover commuter rail service. Commuter rail service, unlike rapid transit operations, operates on the general railroad system of transportation, often over the same trackage over which freight railroads operate. In addition, the equipment used in commuter rail service carries substantial weight which, in turn, requires significant stopping distances. Even though the commuter rail service in Manchester-by-the-Sea may entirely consist of short passenger trains, the longer stopping distances associated with conventional commuter rail operations necessitate advance warning of their impending arrival at grade crossings, absent additional safety measures that mitigate existing risk.

Section 222.7 What Is This Regulation's Effect on State and Local Laws and Ordinances?

This section contains a statement of FRA's intent regarding the preemptive effect of this final rule. While the presence or absence of such a section does not conclusively establish the preemptive effect of a final rule, it provides information to the public about the statutory provisions that govern the preemptive effect of the rule and FRA's position on this issue.

Paragraph (a) has been revised in the final rule to provide clarification as to the preemptive effect of the rule on State laws governing the sounding of the locomotive horn at public highway-rail grade crossings. 49 U.S.C. 20106 states that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. However, the highway-rail grade crossings described in § 222.3(c) are exempt from the scope of the final rule. Therefore, except as provided in paragraph (b) of this section, this final rule shall preempt any State statutory or common law, local ordinance or State or local regulatory agency rule governing locomotive horn use at public highway-rail grade crossings. As for the highway-rail grade crossings described in § 222.3(c), paragraph (b) states that the final rule will not have any preemptive effect on State laws, rules, regulations, or orders governing the sounding of the locomotive horn at those crossings. Note that this statement of non-preemptive effect applies only to those Chicago

Region highway-rail grade crossings described in § 222.3(c). Thus, it does not apply to every highway-rail grade crossing in the Chicago Region.

Paragraph (c) states that the final rule preempts any State statutory or common law, local ordinance or State or local regulatory agency rule governing locomotive horn use at private and pedestrian grade crossings that are located within a duly established quiet zone. This paragraph has been revised in the final rule to include a reference to the rule's preemptive effect over State and local laws governing locomotive horn use at pedestrian grade crossings within quiet zones.

Paragraph (d) states that the final rule will not preempt State law regarding use of SSMs and ASMs as traffic control measures. However, with the exception of SSMs and ASMs implemented at the highway-rail grade crossings described in § 222.3(c), the final rule will preempt State law governing the sounding of the locomotive horn at highway-rail grade crossings equipped with SSMs and/or ASMs. Since the highway-rail grade crossings described in § 222.3(c) are exempt from the scope of the final rule, the final rule will not preempt State law governing the sounding of the locomotive horn at those crossings.

Paragraph (e), which expresses FRA's intent to refrain from preempting State law concerning administrative procedures that must be followed regarding the installation or modification of engineering improvements at highway-rail grade crossings, has been added to the final rule in response to comments requesting clarification of the role of State agencies that have jurisdiction over highway-rail grade crossing safety. For example, while requesting clarification of the rule's effect on the role of State agencies, the Oregon Department of Transportation noted that signal and median installations within the state of Oregon must be approved by the Oregon Department of Transportation's Rail Division. Along the same vein, the Missouri Department of Transportation stated that whenever highway-rail grade crossings are modified, the Missouri Department of Transportation is required to review and approve plans and issue administrative orders. Noting that State law gives it exclusive jurisdiction over the terms of installation, operation, maintenance, use and protection of each crossing, the California Public Utilities Commission asserted that the interim final rule was sufficiently vague that some localities might assume that they could bypass state agencies, such as the California Public Utilities Commission, that are empowered with exclusive authority over grade crossing design and modification. The Township of Montclair, New Jersey also submitted comments requesting clarification of the State's role during the quiet zone development process. After reviewing these comments, FRA has revised the final rule by specifically stating, in paragraph (e), that the rule does not preempt State law concerning administrative procedures for the installation or modification of highway-rail grade crossing improvements.

Section 222.9 Definitions

The definitions of ''Administrator'', ''Alternative safety measures (ASMs)'', and ''Associate Administrator'' have not been revised in the final rule.

''Channelization device'' means a traffic separation system made up of a raised longitudinal channelizer, with vertical panels or tubular delineators attached, that is placed between opposing highway lanes designed to alert or guide traffic around an obstacle or to direct traffic in a particular direction. ''Tubular markers'' and ''vertical panels'' as described in sections 6F.57 and 6F.58, respectively, of the Manual on Uniform Traffic Control Devices (''MUTCD'') issued by the Federal Highway Administration, are acceptable channelization devices for purposes of this part. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the channelization device. However, FRA notes that it would be highly advisable to use raised longitudinal channelizers that are at least four inches high.

FRA revised the definition of channelization device in the final rule to reflect the fact that tubular markers and vertical panels must now be attached to raised curbing, in order to qualify as an SSM. Even though the interim final rule allowed the use of tubular markers and vertical panels that were directly affixed to the pavement as Supplementary Safety Measures, FRA received a number of negative comments about the effectiveness and high maintenance burden associated with the use of this type of roadway treatment. After considering these comments, FRA has removed surface-mounted channelization devices from the list of approved SSMs. Therefore, the rule has been revised by restricting the definition of channelization devices to include only those raised longitudinal channelizers that are equipped with vertical panels or tubular delineators.

''Chicago Region'' means the following six counties in the State of Illinois: Cook, DuPage, Lake, Kane, McHenry and Will.

The definition of ''Crossing Corridor Risk Index'' was not revised in the final rule. The definition of ''Diagnostic team'' was also not revised in the final rule. The California PUC submitted comments recommending that the definition of ''diagnostic team'' be revised to state that State agencies with jurisdiction over grade crossings must be included in any diagnostic team. However, FRA did not revise the definition of ''diagnostic team'' to mandate the inclusion of State agencies with jurisdiction over grade crossings because no funding for diagnostic team activities has been provided.

''Effectiveness rate'' means a number between zero and one which represents the reduction of the likelihood of a collision at a public highway-rail grade crossing as a result of the installation of an SSM or ASM when compared to the same crossing equipped with conventional active warning systems of flashing lights and gates. Zero effectiveness means that the SSM or ASM provides no reduction in the probability of a collision, while an effectiveness rating of one means that the SSM or ASM is totally effective in eliminating collision risk. Measurements between zero and one reflect the percentage by which the SSM or ASM reduces the probability of a collision. This definition has been revised in the final rule to correct a typographical error.

The definitions of ''FRA'' and ''Grade Crossing Inventory Form'' have not been revised in the final rule.

''Intermediate Partial Quiet Zone'' means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns for a specified period of time during the evening or nighttime hours, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads for a specified period of time during the evening and/or nighttime hours, and at which such statutes, ordinances or agreements were in place and enforced or observed as of December 18, 2003, but not as of October 9, 1996.

''Intermediate Quiet Zone'' means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of

locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of December 18, 2003, but not as of October 9, 1996.

The definitions of ''Locomotive'', ''Locomotive horn'', ''Median'', ''MUTCD'', and ''Nationwide Significant Risk Threshold'' have not been revised in the final rule.

''New Partial Quiet Zone'' means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded between the hours of 10 p.m. and 7 a.m., but are routinely sounded during the remaining portion of the day, and which does not qualify as a Pre-Rule Partial Quiet Zone. This definition contains a uniform period for the routine silencing of the locomotive horn, which was included in response to comments submitted by the Florida East Coast Railway asserting that different time periods for partial quiet zones would cause operational confusion and make compliance difficult.

''New Quiet Zone'' means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which routine sounding of locomotive horns is restricted pursuant to this part and which does not qualify as either a Pre-Rule Quiet Zone or Intermediate Quiet Zone.

''Non-traversable curb'' means a highway curb designed to discourage a motor vehicle from leaving the roadway. Non-traversable curbs, which are used at locations where highway speeds do not exceed 40 miles per hour, are at least six inches high. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the curb.

FRA revised this definition in the final rule to correct a typographical error and to remove the maximum height requirement contained within the interim final rule. The interim final rule defined non-traversable curbs as being *more* than six inches, but no more than nine inches high. As noted by SEH, Inc., this definition would exclude the standard six-inch curb frequently used by governmental entities. Therefore, FRA has revised the definition to include the standard six-inch curbs that are frequently used by governmental entities.

''Partial Quiet Zone'' means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which locomotive horns are not routinely sounded for a specified period of time during the evening and/or nighttime hours.

''Pedestrian crossing'' means, for purposes of this part, a separate designated sidewalk or pathway where pedestrians, but not vehicles, cross railroad tracks. Sidewalk crossings contiguous with, or separate but adjacent to, public highway-rail grade crossings, are presumed to be part of the public highway-rail grade crossing and are *not* considered pedestrian crossings for purposes of this rule.

The definition for ''Power-out indicator'' has not been revised in the final rule.

''Pre-existing Modified Supplementary Safety Measure'' (Pre-existing Modified SSM) means a safety system or procedure that is listed in appendix A to this Part, but is not fully compliant with the standards set forth therein, which was installed before December 18, 2003 by the appropriate traffic control or law enforcement authority responsible for safety at the highway-rail grade crossing. The calculation of risk reduction credit for pre-existing modified SSMs is addressed in appendix B of this part.

''Pre-existing Supplementary Safety Measure'' (Pre-existing SSM) means a safety system or procedure established in accordance with this part before December 18, 2003 which was provided by the appropriate traffic control or law enforcement authority responsible for safety at the highway-rail grade crossing. These safety measures must fully comply with the SSM requirements set forth in appendix A. The calculation of risk reduction credit for qualifying pre-existing SSMs is addressed in appendix A of this part.

''Pre-Rule Partial Quiet Zone'' means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted horns for a specified period of time during the evening and/or nighttime hours, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads for a specified period of time during the evening and/or nighttime hours, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003.

The definition of Pre-Rule Partial Quiet Zone specifically includes partial whistle bans enforced or observed as of the date of passage of Public Law 104–264, which amended 49 U.S.C. 20153 to require the Secretary to take into account the interest of communities that ''have in effect'' restrictions on the sounding of the locomotive horn at highway-rail grade crossings or have not been subject to the routine sounding of a locomotive horn at highway-rail grade crossings. FRA reads the statute as requiring FRA to be particularly solicitous of communities that had restrictions in effect at the time of the 1996 ordinance.

The definitions of ''Pre-Rule Quiet Zone'' and ''Private highway-rail grade crossing'' have not been revised in the final rule.

''Public authority'' means the public entity responsible for traffic control or law enforcement at the public highway-rail grade or pedestrian crossing. The definition of this term has been revised to more accurately reflect the statutory definition provided in 49 U.S.C. 20153. In making this revision, FRA is responding to comments submitted by the American Association of Railroads (''AAR'') which asserted that, under the definition provided in the interim final rule, multiple entities could qualify for public authority status over a set of crossings. For example, a county police department could have jurisdiction over the same set of crossings that fall under the jurisdiction of a State highway agency. Under such a scenario, the county police department and the State highway agency would qualify for ''public authority'' status. By narrowing scope of the definition, FRA is attempting to minimize the number of circumstances in which there may be multiple entities that can qualify for public authority status over a single set of crossings. While the definition refers to the entity ''responsible for traffic control or law enforcement'' at the public crossing, FRA does not contemplate that the local police department will be the entity creating a quiet zone. Instead, the public entity having control over that law enforcement agency would be the more appropriate entity. Thus, if city police patrol the crossing, the city government, rather than the actual city police department, would be the appropriate entity.

''Public highway-rail grade crossing'' means, for purposes of this part, a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. If a public authority maintains the roadway on both sides of the crossing, the crossing

is considered a public crossing for purposes of this part.

The definition of public highway-rail grade crossing has been revised in the final rule. The Florida Department of Transportation submitted comments asserting that the definition of public highway-rail grade crossing in the interim final rule is inconsistent with the definition of public road provided in Title 23 of the United States Code. Noting that grade crossings owned and maintained on one side by a private entity are generally considered to be private crossings, the AAR also submitted comments expressing concern that the definition provided by the interim final rule would include a number of crossings that are currently considered private crossings. As a result, the interim final rule would require routine horn sounding at many crossings where horns are not currently sounded. After considering these comments, FRA revised the definition of public highway-rail grade crossing to reflect the generally-accepted industry standard of having a public roadway on both sides of the crossing.

The definition of ''Quiet Zone'' has not been revised in the final rule.

''Quiet Zone Risk Index'' means a measure of risk to the motoring public which reflects the Crossing Corridor Risk Index for a quiet zone, after adjustment to account for increased risk due to lack of locomotive horn use at the crossings within the quiet zone (if horns are presently sounded at the crossings) and reduced risk due to implementation, if any, of SSMs and ASMs with the quiet zone.

The calculation of the Quiet Zone Risk Index, which is explained in appendix D of this part, does not differ for partial quiet zones. FRA calculates risk on a 24-hour basis for all quiet zones, even if restrictions on locomotive horn use have only been imposed during the nighttime hours.

The definition of ''Railroad'' has not been revised in the final rule.

''Recognized State agency'' means, for purposes of this part, a State agency, responsible for highway-rail grade crossing safety or highway and road safety, that has applied for and been approved by FRA as a participant in the quiet zone development process.

''Relevant collision'' means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: A collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision in which the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. For purposes of Pre-Rule Partial Quiet Zones, a relevant collision shall not include collisions that occur during the time period within which the locomotive horn is routinely sounded.

A specific exception has been added to the definition of ''relevant collision'' for Pre-Rule Partial Quiet Zones. This exception has been added to the final rule to ensure that only those relevant collisions which occur during periods when the locomotive horn is silenced will be considered for purposes of § 222.41(b).

FRA received comments from Metra recommending that the definition of ''relevant collision'' be revised to exclude collisions that were deemed intentional on the part of the driver and collisions caused by driver impairment due to consumption of alcohol or controlled substances. The City of Cumberland, Maryland also submitted comments recommending that the definition of ''relevant collision'' be revised to exclude collisions in which the driver was under the influence of drugs or alcohol and collisions in which the driver committed suicide. However, FRA did not revise the definition of ''relevant collision'' to exclude these types of collisions because primary cause determinations for highway-rail grade crossing collisions are matters that are best left for resolution by the courts.

Lastly, the AAR submitted comments recommending that the definition of ''relevant collision'' be revised to include collisions at highway-rail grade crossings between a train and a pedestrian. While collisions between trains and pedestrians have been included in the overall calculation of grade crossing risk, FRA has not revised the definition of ''relevant collisions'' to include collisions between trains and pedestrians because pedestrian collisions are not relevant on the direct issue of motorist decision-making.

''Risk Index With Horns'' means a measure of risk to the motoring public when locomotive horns are routinely sounded at every public highway-rail grade crossing within a quiet zone. In Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones, the Risk Index With Horns is determined by adjusting the Crossing Corridor Risk Index to account for the decreased risk that would result if locomotive horns were routinely sounded at each public highway-rail grade crossing.

The definitions of ''Supplementary safety measure (SSM)'', ''Waiver'', and ''Wayside horn'' have not been revised in the final rule.

Section 222.11 What Are the Penalties for Failure To Comply With This Regulation?

This section has been revised in the final rule to reflect the May 2004 inflation adjustment of FRA's maximum and minimum civil monetary penalties. Under the final rule issued on May 28, 2004 (69 FR 30591), FRA increased its minimum civil penalty from $500 to $550 and its maximum civil penalty where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury or has actually caused death of injury from $22,000 to $27,000.

Section 222.13 Who Is Responsible for Compliance?

This section has not been revised in the final rule.

Section 222.15 How Does One Obtain a Waiver of a Provision of This Regulation?

The California PUC submitted comments recommending that the rule be revised to require that any petition for waiver must come before the State agency responsible for grade crossings. The California PUC asserted that, at the very least, the State agency responsible for crossing safety should be a party to the waiver proceeding and should be given an opportunity to address the petition. However, FRA notes that the waiver procedures set forth in 49 CFR part 211 require publication notice of the waiver petition in the **Federal Register** and the public, including State agencies, is encouraged to submit comments on the waiver petition before FRA issues a decision.

The National League of Cities submitted comments recommending that the scope of this section be expanded to include multi-jurisdictional quiet zones. By expanding this section to include multi-jurisdictional quiet zone disputes, FRA would make the final decision with respect to whether quiet zone status should be granted or denied in those instances in which an individual jurisdiction is in opposition to a proposed multi-jurisdictional quiet zone. However, FRA is unwilling to allow the waiver process to be used by one jurisdiction to impose its proposed quiet zone and all resultant responsibilities upon its neighbor. Therefore, the changes requested by the National League of Cities will not be made.

This section has been revised, however, to conform to the statutory requirements of §§ 20153(d) and 201553(I)(3). Accordingly, paragraph (b)

has been revised to require that in the event the railroad and public authority cannot reach agreement to file a joint petition, the filing party, in addition to specifying in its petition the steps it has taken in an attempt to reach agreement with the other party, must also explain why applying the requirement for a jointly filed submission under paragraph (a) would not be likely to contribute significantly to public safety. If the Associate Administrator determines that applying the requirement for a jointly filed submission to that particular petition would not be likely to significantly contribute to public safety, the Associate Administrator shall waive the requirement for a joint submission and accept the petition for consideration.

Paragraphs (c) and (d) of this section have not been revised in the final rule.

Section 222.17 How Can a State Agency Become a Recognized State Agency?

This section sets forth the procedure that shall be followed by a State agency responsible for highway-rail grade crossing safety and/or highway and road safety in order to become a recognized State agency. Even though the specific functions of a recognized State agency are subject to agreement between the State agency and FRA, FRA envisions that a recognized State agency could act as a quiet zone clearinghouse by providing guidance on appropriate SSM selection, ensuring that proposed grade crossing improvements comply with FRA regulations and State administrative rules, securing all necessary State administrative approvals, and ensuring that all required public authority notification packages comply with FRA regulations. FRA does not, however, plan to delegate any authority to approve quiet zone applications or to establish acceptable risk thresholds within quiet zones. Nor does FRA intend to allow recognized State agencies to prevent public authorities from creating quiet zones, if the proposed quiet zone qualifies under this rule and all applicable State laws and regulations.

FRA has added this section to the final rule in response to comments submitted by State agencies who suggested the need for a larger role in the quiet zone development process. Asserting that the State's role was virtually non-existent under the interim final rule, the Minnesota Department of Transportation submitted comments expressing concern that the interim final rule would allow communities to bypass the considerable expertise of State agencies charged with improving grade crossing safety. The North Carolina Department of Transportation recommended that State departments of transportation serve as clearinghouses for quiet zone requests, so that State agencies could be involved in safety evaluations for each proposed quiet zone.

Other State agencies submitted comments requesting a more expansive role during the quiet zone development process. The Ohio Public Utilities Commission and the California Public Utilities Commission submitted comments recommending that all proposed quiet zones be reviewed and approved by State grade crossing regulatory agencies. Similarly, the Ohio Rail Association submitted comments recommending that the final rule extend to States the power to determine what oversight and safety standards need to be applied when communities seek quiet zones. FRA also received a Proposed Alternative Crossing Program from the Chicago Region, under which FRA would delegate the authority to implement and manage quiet zone development to an appropriate State agency with railroad safety oversight responsibilities.

After considering these comments, FRA decided to create a process by which State agencies who are interested in having a greater role in quiet zone development can provide assistance to FRA throughout the quiet zone development process. As suggested by the North Carolina Department of Transportation, recognized State agencies could serve as clearinghouses for proposed quiet zones by coordinating quiet zone creation and verifying local compliance with all applicable FRA regulations and State laws and administrative rules. However, as stated above, FRA does not plan to delegate any authority to approve quiet zone applications or to establish acceptable quiet zone risk thresholds.

Paragraph (a) provides that a State agency responsible for highway-rail grade crossing safety and/or highway and road safety may become a recognized State agency by submitting an application to the Associate Administrator. This application must contain a detailed description of the State agency's proposed scope of involvement in the quiet zone development process, contact information for the person(s) who will be made available to discuss the State agency application with FRA, and a statement from State agency counsel affirming that the State agency is authorized to undertake the responsibilities proposed.

Paragraph (b) provides that FRA will approve the State agency application if the proposed scope of involvement will, in the Associate Administrator's judgment, facilitate safe and effective quiet zone development. However, the Associate Administrator reserves the right to impose additional conditions as may be necessary to ensure effective coordination between the State agency and FRA during the quiet zone development process.

Section 222.21 When Must a Locomotive Horn Be Used?

Paragraph (a) of this section establishes the duty to sound the locomotive horn when approaching a public highway-rail grade crossing. The locomotive horn shall be sounded when the lead locomotive or cab car is approaching a public highway-rail grade crossing. This paragraph also requires the sounding of the locomotive horn in a pattern of two long, one short, and one long blast, which shall be initiated at the location specified in paragraph (b) of this section. The locomotive horn sounding pattern shall be repeated or prolonged until the locomotive or train occupies the crossing. However, the horn sounding pattern may be varied as necessary where crossings are spaced closely together.

FRA revised this paragraph in response to comments received from the AAR which noted an inconsistency in the locomotive horn sounding requirements imposed by the first two sentences in the interim final rule. The first sentence of this paragraph originally required the sounding of the locomotive horn when the locomotive or lead car *approached and passed through* a public grade crossing. However, the second sentence in the interim final rule required that the sounding of the locomotive horn be repeated or prolonged until the locomotive or train *occupied* the public grade crossing. For the sake of consistency, FRA revised the first sentence of this paragraph to address the initiation of locomotive horn sounding, so that only the second sentence of this paragraph refers to the duration of the locomotive horn sounding requirement.

Paragraph (b) of this section addresses the time interval within which the locomotive horn shall sound in advance of the public highway-rail grade crossing. Under the interim final rule, this paragraph (b) required that the locomotive horn shall begin sounding at least 15 seconds, but no more than 20 seconds, before the locomotive enters a public highway rail grade crossing. The paragraph also stated that in no event

shall a locomotive horn be sounded more than one-quarter mile in advance of the crossing.

FRA received comments on this paragraph from the North Carolina Department of Transportation and the AAR. North Carolina noted that a train operating at a speed of 80 mph would only be able to sound its horn for 11 seconds prior to its arrival at a public grade crossing. On the other hand, the AAR noted that a train operating at a speed less than 45 mph would sound its horn for more than 20 seconds, if horn sounding was initiated one-quarter mile from the public crossing.

As a result of the comments received, FRA revised this paragraph. New paragraph (b)(1) provides that, subject to paragraph (b)(2), the locomotive horn shall begin sounding at least 15 seconds, but no more than 20 seconds, before the locomotive enters a public highway-rail grade crossing. Paragraph (b)(2) addresses locomotives traveling at speeds more than 45 mph. That paragraph states that locomotives traveling at speeds in excess of 45 mph shall not begin sounding the horn more than one-quarter mile in advance of a public grade crossing, even if the advance warning provided by the locomotive will be less than 15 seconds in duration. Research has shown that the effect of a locomotive horn sounded at a distance greater than ¼ mile from a grade crossing is attenuated to the extent that it does not provide adequate warning to the motorist. There is thus no need to sound the horn beyond this point. Eliminating the extra distance over which the horn is sounded will reduce its noise impact on nearby residences and businesses without affecting safety at grade crossings.

The Brotherhood of Locomotive Engineers and Trainmen submitted comments reiterating the importance of retaining whistle posts in their current locations to help locomotive engineers gauge their distance from upcoming public crossings. Asserting that the location of upcoming grade crossings can often only be determined in reference to permanent whistle boards, the Metropolitan Transit Authority submitted comments asserting that it would be virtually impossible for locomotive engineers to comply with the rule, given the range of speeds over which trains are operated. Although FRA has not received many comments from locomotive engineers and their representatives asserting that there may be substantial difficulties in complying with the time-based horn sounding requirements contained within this rule, FRA encourages railroads to retain present whistle boards as an aid to their locomotive engineers.

Paragraph (c), which has been added to the final rule, reiterates the fact that the highway-rail grade crossings described in § 222.3(c) have been excluded from the scope of the final rule. Since the horn sounding requirements established by this section will not apply, locomotive horn sounding at these crossings will continue to be governed by State and local law.

Section 222.23 How Does This Regulation Affect Sounding of a Horn During an Emergency or Other Situations?

This section addresses the situations in which the locomotive horn may be sounded within a quiet zone. Paragraph (a)(1) is intended to make clear that a locomotive engineer may sound the locomotive horn in emergency situations. Notwithstanding any other provision of the rule, a locomotive engineer may sound the locomotive horn to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death, or property damage. Thus, establishment of a quiet zone shall not prevent the locomotive engineer from using his or her discretion to sound the locomotive horn in emergency situations.

The AAR submitted comments on the interim final rule recommending that this paragraph be revised to specifically state that sounding of the locomotive horn to warn animals constitutes an emergency situation that would justify horn sounding within a quiet zone. FRA agrees that sounding the locomotive horn to warn animals that are trespassing on, or near the track, constitutes an emergency situation that justifies horn sounding within a quiet zone. Therefore, the rule has been revised accordingly.

Paragraph (a)(2) is intended to clarify that while the rule does not preclude the sounding of the locomotive horn in emergency situations, the rule also does not impose a legal duty to do so. FRA received a number of comments from communities throughout the country who were concerned that the limited scope of this provision does not shield public authorities from liability for silencing the routine use of the locomotive horn within quiet zones. For example, the Village of Hinsdale, Illinois asserted that the interim final rule exempts railroads from liability and recommended that the final rule be revised to provide the same coverage for public authorities. Along the same lines, the City of Placentia, California submitted comments suggesting that the final rule be revised to specify that it is intended to provide protection from liability for silencing the train horn to public authorities, as well as the railroad and train crew. The City of Placentia also recommended that this protection from liability extend to incidents involving both motor vehicles and pedestrians. The Village of Cornwall-on-Hudson, New York submitted comments asserting that by not addressing the liability of local communities that create quiet zones, the interim final rule shifts traditional railroad liability away from the party that is profiting from the use of the tracks and onto local governments. The City of Sacramento, California submitted comments recommending that the final rule be revised to state that the establishment of a quiet zone cannot be the basis of a claim against a local entity, provided the local entity established the quiet zone in accordance with the rule. Along the same lines, the Town of Riverside, Illinois submitted comments suggesting that the final rule contain a clear statement that it is not intended to create any new liability for municipalities. The City of West University Place, Texas submitted comments suggesting that the final rule be revised by including broad language that eliminates liability—either civil or criminal—for public and private organizations and individuals who participate in quiet zone establishment.

As stated in the interim final rule, FRA intends to protect from liability the locomotive engineer who, in accordance with this rule and railroad operating rules that were established in response to the creation of a quiet zone, does not sound the locomotive horn. As for the public authority that creates a quiet zone in accordance with this part, FRA expects that the courts will apply the standard of care set by this rule, inasmuch as any quiet zone established in accordance with this part will have been established in accordance with federal law and FRA's intention to preempt State law is expressly stated. This rule, in effect, establishes the standard of care for the creation of quiet zones and the sounding of train horns, providing reassurance both to railroads and communities that no plaintiff will prevail on the basis that an audible warning has been withheld. Further, this rulemaking does nothing to undermine the sovereign immunity of State and local governments, where they have asserted it.

Paragraph (b) of this section addresses situations involving warning system malfunctions, in which use of the locomotive horn within a quiet zone shall be allowed. These situations include instances in which active grade crossing warning devices have malfunctioned and use of the locomotive horn is required by §§ 234.105, 234.106, or 234.107 of title 49, Code of Federal Regulations. These situations also include instances in which a grade warning system is temporarily out of service for inspection, testing, or maintenance purposes. The final rule includes a third category of warning system malfunction, which consists of wayside horn malfunctions, the occurrence of which shall also exempt locomotive horn use within a quiet zone.

Paragraph (c) permits use of the locomotive horn, within a quiet zone, to announce the approach of a train to roadway workers in accordance with a program adopted under part 214 of this Chapter, or where otherwise required by railroad operating rule.

Section 222.25 How Does This Rule Affect Private Highway-Rail Grade Crossings?

This section clarifies the manner in which this rule affects private crossings. (Section 20153(f) of title 49 explicitly gives discretion to the Secretary on the question of whether private highway-rail grade crossings should be subject to the rule's locomotive horn sounding requirements.) FRA has determined that exercising its jurisdiction in a limited manner over these crossings is the appropriate course of action.

This section specifically states that this rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings. Although FRA has jurisdiction over locomotive horn use at private crossings based on 49 U.S.C. 20103 and 20153, it is not exercising that jurisdiction at this time, except as to the use of horns at private crossings within quiet zones.

Paragraph (a) has not been revised in the final rule. However, paragraph (b) has been revised to require the public authority to provide an opportunity to the State agency responsible for grade crossing safety and all affected railroads to participate in diagnostic team reviews of private crossings located within New Quiet Zones and New Partial Quiet Zones. FRA is making this revision in response to comments requesting a greater role for State agencies and affected railroads in the quiet zone establishment process. For example, the Florida East Coast Railway expressed concern that the interim final rule would entitle a local community to establish a quiet zone without railroad input because the importance of receiving such input during the planning process cannot be overlooked. The Fort Worth & Western Railroad, New Orleans & Gulf Coast Railroad, and the Idaho Northern & Pacific Railroad submitted comments recommending that the interim final rule be revised to establish a proactive review process by railroads on the potential impacts of proposed quiet zones. The Southern California Regional Rail Authority commented that the final rule should require diagnostic team reviews of every grade crossing within a proposed quiet zone or diagnostic team reviews of every grade crossing that will be treated with an SSM that will need to be connected to the grade crossing warning system. (Please see the Section-by-Section discussion of § 222.17 for a summary of the comments requesting a greater role for State agencies.) After considering these comments, FRA revised the rule by providing greater opportunity for railroads to provide input during the quiet zone development process. The revision of paragraph (b) reflects this approach, as public authorities are now required to provide an opportunity for State agencies and railroads to participate in diagnostic team reviews of private crossings.

Paragraph (b)(1) retains the requirement contained within the interim final rule that private highway-rail grade crossings located within New Quiet Zones which allow access to the public, or access to active industrial or commercial sites, may be included in a quiet zone only if a diagnostic team evaluates the crossing to determine whether the institution of a quiet zone will significantly increase risk at the private crossing. The scope of this requirement has, however, been expanded in the final rule to include New Partial Quiet Zones.

Paragraph (b)(2) states that the public authority shall provide the State agency responsible for grade crossing safety and all affected railroads an opportunity to participate in the diagnostic team review of private crossings. This new requirement should ensure that the State agency and all affected railroads are given an opportunity to express their views and provide useful information for the public authority to consider. As stated in paragraph (a), the private crossing must then be equipped or treated in accordance with the recommendations of the diagnostic team.

This rule does not specify the financial responsibility of parties for safety improvements at private crossings. Responsibility will be determined under normal principles of property law and based upon whatever contracts and cooperative agreements that may have been entered into by the parties. It is, however, expected that the public authority seeking to establish a quiet zone would assume responsibility for funding any necessary improvements, the private crossing owner would agree to the installation of any necessary improvements, and the railroad would assume practical responsibility for maintenance of any automated warning systems at the crossing.

Paragraph (c) of this section establishes requirements for the installation of signage at private crossings located within quiet zones. Paragraph (c)(1) states that every private crossing within a New Quiet Zone or New Partial Quiet Zone shall, at a minimum, be equipped with crossbucks and ''STOP'' signs, which are compliant with MUTCD standards unless otherwise prescribed by State law, together with advance warning signs that comply with § 222.35(c). However, even if State law prescribes use of a private crossing sign that is not MUTCD-compliant, the private crossing sign must indicate to the motorist that a stop is required. Paragraph (c)(2) provides a period of three years from the effective date of the final rule for the installation of such signs at private crossings located within Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones.

Paragraph (c) has been revised in response to comments submitted by the Association of American Railroads. Under the interim final rule, crossbucks and ''STOP'' signs that were installed at private crossings within quiet zones were required to conform to the MUTCD. However, the Association of American Railroads noted in its comments that some railroads use stop signs and crossbucks that have been incorporated into a ''private railroad crossing'' sign, which does not comply with all aspects of the MUTCD. Furthermore, the Association of American Railroads asserted that the State of California mandates use of a specific private railroad crossing sign. Therefore, the interim final rule would require railroads to replace signs that have been widely used for years. In an attempt to reduce the regulatory burdens associated with this rule, FRA has revised this paragraph to allow railroads and public authorities to continue to use crossbucks and ''STOP'' signs that are not fully compliant with MUTCD standards, if prescribed by State law.

Section 222.27 How Does This Rule Affect Pedestrian Crossings?

This section has been added to the final rule in order to address pedestrian crossings located within quiet zones. (Section 20153(f) of title 49 explicitly gives discretion to the Secretary on the question of whether pedestrian crossings should be subject to the rule's locomotive horn sounding requirements.) FRA has determined that exercising its jurisdiction in a limited manner of these crossings is the appropriate course of action. Although FRA has jurisdiction over locomotive horn use at pedestrian crossings based on 49 U.S.C. 20103 and 20153, it is not exercising that jurisdiction at this time except as to the use of horns at pedestrian crossings within quiet zones.

The AAR submitted comments warning that the failure of the interim final rule to address pedestrian crossings and pedestrian accidents was a major gap in the regulatory scheme. Noting that, in the absence of the warning provided by the locomotive horn, the only warning a pedestrian may have of an approaching train is the sound of the train itself and visual observation, the AAR recommended that the final rule require public authorities that want to create New Quiet Zones that encompass pedestrian crossings to demonstrate that they have addressed the effect that the quiet zone would have on pedestrian traffic.

It is imperative that the establishment of a quiet zone shall not result in a significant increase in risk at pedestrian crossings located within the quiet zone. Therefore, FRA is addressing pedestrian crossings in a manner similar to the approach recommended by the AAR. Paragraph (a) of this section provides that pedestrian crossings may be included in a quiet zone. Paragraph (b) of this section requires public authorities to address pedestrian safety issues when establishing New Quiet Zones and New Partial Quiet Zones that contain pedestrian crossings. Public authorities that want to establish a New Quiet Zone or New Partial Quiet Zone that contains pedestrian crossings will be required to conduct diagnostic team reviews of the pedestrian crossings and treat them in accordance with the diagnostic team recommendations. Paragraph (c) states that the public authority is required to provide an opportunity for the State agency responsible for grade crossing safety and all affected railroads to participate in diagnostic team reviews of pedestrian crossings. This will ensure that the State agency and all affected railroads are given an opportunity to express their views and provide useful information for the public authority to consider.

Paragraph (d), which has been added to the final rule, requires the installation of signs at pedestrian crossings located within quiet zones that advise pedestrians that train horns are not sounded at the crossing. Noting that the interim final rule failed to require specific warnings for pedestrians within quiet zones, the Southern California Regional Rail Authority and Caltrain submitted comments recommending that the rule be revised to require the posting of warning signs at locations within quiet zones where pedestrians can access the railroad right-of-way. After considering these comments, in combination with the comments of the AAR which have been described above, FRA added paragraph (d) to the final rule to provide an additional warning to pedestrians at pedestrian crossings located within quiet zones.

Paragraph (d)(1) requires that each pedestrian crossing within a New Quiet Zone shall be equipped with a sign that advises the pedestrian that train horns are not sounded at the crossing. FRA recommends use of the W10–9 ''NO TRAIN HORN'' sign within New Quiet Zones. However, any sign used shall conform to the standards contained in the MUTCD.

Paragraph (d)(2) requires that each pedestrian crossing within a New Partial Quiet Zone shall be equipped with a sign that advises the pedestrian that train horns are not sounded at the crossing between the hours of 10 p.m. and 7 a.m. FRA recommends use of the W10–9 ''NO TRAIN HORN'' sign, in combination with a yellow S4–1 ''10 p.m. to 7 a.m.'' sign within New Partial Quiet Zones. However, any sign(s) used shall conform to the standards contained in the MUTCD.

Paragraph (d)(3) requires that each pedestrian crossing within a Pre-Rule Quiet Zone shall be equipped by June 24, 2008 with a sign that advises the pedestrian that train horns are not sounded at the crossing. FRA recommends use of the W10–9 ''NO TRAIN HORN'' sign within Pre-Rule Quiet Zones. However, any sign used shall conform to the standards contained in the MUTCD.

Paragraph (d)(4) requires that each pedestrian crossing within a Pre-Rule Partial Quiet Zone shall be equipped by June 24, 2008 with a sign that advises the pedestrian that train horns are not sounded at the crossing for a specified period of time. FRA recommends use of the W10–9 ''NO TRAIN HORN'' sign, in combination with a yellow S4–1 sign that sets forth the hours during which train horns will be not sounded, within Pre-Rule Partial Quiet Zones. However, any sign(s) used shall conform to the standards contained in the MUTCD.

Paragraphs (d)(3) and (4) provide a three-year grace period for the installation of signs at pedestrian crossings in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones. This three-year grace period tracks the three-year grace period provided to Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones under § 222.41.

Section 222.33 Can Locomotive Horns Be Silenced at an Individual Public Highway-Rail Grade Crossing That Is Not Within a Quiet Zone?

This section has not been revised in the final rule. FRA received comments on this section from the DuPage Mayors and Managers Conference and the Chicago Area Transportation Study recommending that the rule be revised to exclude from the rule's locomotive horn sounding requirements those situations in which the train stops immediately before or after a highway-rail grade crossing. After considering these comments, FRA did not revise the final rule because of the potential confusion that could be created for motorists. Motorists who may have come to expect the sounding of the locomotive horn may not stop before entering a crossing that is occupied by a train that is preparing to depart. Likewise, motorists who are unaware that an approaching train intends to stop immediately after the grade crossing may actually accelerate upon viewing an approaching train, in order to ''beat'' the train over the crossing. Both of these scenarios present a potentially unacceptable increase in risk.

FRA also received comments from Metra recommending that this section be revised to exempt train operations at speeds of 30 mph or less. Metra also recommended that the ''flagger'' requirement be removed under such a scenario. This section was included in the rule in order to exempt switching operations from the rule's locomotive horn sounding requirements. However, FRA is unwilling to expand the scope of this exemption to include low-speed passenger operations, given the increase in risk associated with passenger operations over public highway-rail grade crossings.

Section 222.35 What are the Minimum Requirements for Quiet Zones?

This section details the minimum requirements for quiet zones established in conformity with this part. It addresses the minimum length of a quiet zone, minimum level of active

warning to be provided, and minimum type of signage required.

Paragraph (a), which governs the minimum required length of quiet zones, has been revised in the final rule. The scope of paragraph (a)(1)(i) has been expanded to include New Partial Quiet Zones. FRA received comments on paragraph (a) of this section from the California PUC which re-asserted its position that the minimum length of quiet zones should not be codified. In the alternative, the California PUC recommended that the rule be revised to allow quiet zone length to be determined by the applicant and railroad and approved by the appropriate State agency. However, as stated in the interim final rule, FRA believes that establishment of a minimum length of one-half mile for most New Quiet Zones and New Partial Quiet Zones is appropriate. With the exception of New Quiet Zones or New Partial Quiet Zones that are added to existing quiet zones, the one-half mile minimum length requirement will ensure that the sounding of the locomotive horn at a public grade crossing located outside the quiet zone will not effectively negate the prohibition on routine locomotive horn sounding within the quiet zone. In addition, the one-half mile minimum requirement for New Quiet Zones and New Partial Quiet Zones should minimize workload demands on the locomotive engineer, who will be required to become familiar with all quiet zone locations along his/her designated routes.

In response to comments received from the Chicago Department of Transportation and the Chicago Area Transportation Study, an exception to the minimum-length requirement has been carved out for New Quiet Zones and New Partial Quiet Zones that are being added to existing quiet zones. In their comments, the Chicago Department of Transportation and the Chicago Area Transportation Study requested that the final rule waive the half-mile minimum length requirement for New Quiet Zones that are located between existing quiet zones or that will be added to the end of an existing quiet zone. After considering the fact that New Quiet Zone grade crossings would be required to comply with all New Quiet Zone standards, with the sole exception of the one-half mile minimum length requirement, FRA decided to add paragraph (a)(1)(ii) to the final rule. Paragraph (a)(1)(ii) states that the one-half mile minimum length requirement set forth under § 222.35(a)(1)(i) shall be waived for New Quiet Zones and New Partial Quiet Zones that are added onto existing quiet zones, provided there is no public highway-rail grade crossing at which locomotive horns are routinely sounded within one-half mile of the New Quiet Zone or New Partial Quiet Zone.

New Quiet Zones and New Partial Quiet Zones in the Chicago Region may not, however, include any highway-rail grade crossing described in § 222.3(c), for purposes of meeting the one-half mile minimum length requirement. Given the uncertainty associated with the appropriate excess risk estimate that should be derived from silencing the locomotive horn at those highway-rail grade crossings, FRA is unable to determine a practicable means of including them in the risk calculations for proposed New Quiet Zones and New Partial Quiet Zones. Therefore, pending completion of the Chicago Region data re-analysis discussed in ''Chicago Regional Issues'' (**SUPPLEMENTARY INFORMATION**, section 7), public authorities who are unable to meet the minimum one-half mile minimum length requirement without including any of the highway-rail grade crossings described in § 222.3(c) in their proposed New Quiet Zones or New Partial Quiet Zones may apply for a waiver, in accordance with § 222.15. FRA will consider any waiver petition submitted on a case-by-case basis.

Paragraph (a)(2) specifically addresses the minimum length requirement for Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones. Even though the length of a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone may continue unchanged, FRA has revised the interim final rule to clarify that the addition of any *public* crossing to a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone will transform the quiet zone into a New Quiet Zone or New Partial Quiet Zone subject to all requirements applicable to New Quiet Zones and New Partial Quiet Zones. In addition, the deletion of any *public* crossing from a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone, with the exception of a grade separation or crossing closure, must result in a quiet zone of at least one-half mile in length in order to retain Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone status.

FRA received comments on paragraph (a)(2) from the DuPage Mayors and Managers Conference and the Chicago Area Transportation Study requesting that the interim final rule be revised to specifically authorize communities to combine adjacent Pre-Rule Quiet Zones. As FRA had always intended to give communities the ability to combine adjacent Pre-Rule Quiet Zones into a single, contiguous Pre-Rule Quiet Zone, FRA has clarified the rule accordingly.

Paragraph (a)(3) has not, however, been revised in the final rule.

Paragraph (b), which addresses the need for active warning devices at crossings within quiet zones, has been revised to address partial quiet zones. Paragraph (b)(1) has not been revised in the final rule. However, paragraph (b)(2) has been added to the final rule to address active warning devices in New Partial Quiet Zones. This new paragraph states that, with the exception of public highway-rail grade crossings that are temporarily closed in accordance with appendix A of this part, each public highway-rail grade crossing in a New Partial Quiet Zone must be equipped, no later than the quiet zone implementation date, with flashing lights and gates that control motorist traffic over the crossing and that conform to the MUTCD. An exception to this requirement has been provided for public highway-rail grade crossings that are closed between the hours of 10 p.m. and 7 a.m., in accordance with appendix A of this part, when routine sounding of the locomotive horn will be prohibited. Paragraph (b)(3) provides that grade crossing safety warning devices that existed at public highway-rail grade crossings located within Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones as of December 18, 2003 must be retained. These warning devices may be upgraded, which can result in additional risk reduction credit when calculating the Quiet Zone Risk Index, but they may not be downgraded from that which was in existence as of December 18, 2003. Any upgrade involving the installation or renewal of an automatic warning device system shall include power-out indicators and constant warning time devices, unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

Paragraph (c) specifically addresses the installation of advance warning signs at grade crossings within a quiet zone. Paragraphs (c)(1) and (2) require that each highway approach to every public and private highway-rail grade crossing within New Quiet Zones and New Partial Quiet Zones shall be equipped with an advance warning sign that advises the motorist that train horns are not sounded at the crossing. Such signs shall conform to the standards contained in the MUTCD. Paragraph (c)(2), which was added to the final rule, requires that each highway approach to public and private highway-rail grade crossings within New Partial Quiet Zones shall be equipped with an advance warning sign that advises the

motorist that train horns are not sounded at the crossing between the hours of 10 p.m. and 7 a.m.

Paragraphs (c)(3) and (4) provide a three-year grace period for the installation of advance warning signs at public and private crossings in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones. This three-year grace period tracks the three-year grace period provided to Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones under § 222.41.

Paragraph (d) has been added to the final rule, in response to comments requesting that the rule be revised to address pedestrian safety issues within quiet zones. The Florida Department of Transportation submitted comments asserting that pedestrian safety at crossings is a significant safety factor that should be addressed in the final rule. The New York Department of Transportation recommended that the final rule address pedestrian traffic over highway-rail grade crossings by requiring the installation of bells at all grade crossings where pedestrian traffic is prevalent and by requiring public authorities to consider pedestrian traffic issues when establishing quiet zones. On the other hand, Caltrain and the Southern California Regional Rail Authority recommended that advance warning signs be installed at locations within quiet zones where pedestrians can legally access the railroad right-of-way. After considering these comments, FRA decided on an approach that incorporates all of their suggestions. Given the fact that the majority of gated crossings are already equipped with at least one automatic bell, paragraph (d)(1) of this section requires that each public highway-rail grade crossing in a New Quiet Zone or New Partial Quiet Zone that is subjected to pedestrian traffic and equipped with at least one or more automatic bells shall retain those bells in working condition. Similarly, paragraph (d)(2) requires that each public highway-rail grade crossing in a Pre-Rule Quiet Zone or Pre-Rule Quiet Zone that is subjected to pedestrian traffic and equipped with at least one or more automatic bells shall retain those bells in working condition.

Public highway-rail grade crossings that are located within a quiet zone, but are not equipped with an automatic bell, shall be equipped with advance warning signs that comply with the MUTCD, in accordance with § 222.35(c). However, FRA assumes that prudent communities will exercise the option to install an automatic bell, particularly at those public grade crossings where the locomotive horn has been silenced. Due to the scope of the Environmental Impact Statement that has accompanied this rulemaking, FRA has refrained from requiring the installation of automatic bells at public highway-rail grade crossings that are located within quiet zones and subject to pedestrian traffic. However, FRA strongly encourages communities to take a prudent approach to quiet zone continuation and establishment.

Paragraph (e) retains the interim final rule requirement that all private crossings within the quiet zone must be treated in accordance with this section and § 222.25.

Paragraph (f), which has been added to the final rule, provides that all pedestrian grade crossings within a quiet zone must be treated in accordance with § 222.27.

Paragraph (g) retains the interim final rule requirement that all public crossings within the quiet zone must be in compliance with the requirements of the MUTCD.

Section 222.37 Who May Establish a Quiet Zone?

This section has not been revised in the final rule. However, it should be noted that the highway-rail grade crossings described in § 222.3(c) have been excluded from the scope of the final rule. Thus, any New Quiet Zones or New Partial Quiet Zones established under this part cannot contain any highway-rail grade crossing described in § 222.3(c).

The Chicago Area Transportation Study submitted comments requesting that the rule be revised to provide an acknowledgment that a public authority (such as a state or county) could grant a blanket delegation of authority to municipalities to pursue and create quiet zones. In its comments, the Chicago Area Transportation Study stated that the State of Illinois has indicated that it would prefer to issue a blanket delegation rather than giving individual, written delegations for each potential quiet zone under its jurisdiction. However, a revision of the rule is not necessary, given the language in paragraph (a) this section, which states that if a proposed quiet zone includes public grade crossings under the authority and control of more than one public authority, both public authorities must agree to the establishment of a quiet zone and may, by delegation provided to one of the authorities, take such actions as are required by this part. The rule already allows the State of Illinois to delegate its authority over public grade crossings within proposed quiet zones to local communities for purposes of quiet zone creation/continuation.

The Village of Hinsdale, Illinois submitted comments recommending that the rule be revised to limit the definition of ''public authority'' to State or regional authorities. In its comments, the Village of Hinsdale stated that local governments have the most constraints and the least experience in dealing with highway-rail grade crossings. In addition, local authorities within the State of Illinois cannot order grade crossing modifications. However, after considering these comments, FRA did not revise the definition of ''public authority'' to exclude local communities. As stated in the interim final rule, a review of section 21053 of title 49 of the United States Code indicates a clear Congressional preference that quiet zone decision-makers be the ''traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing.'' The statute also requires that FRA take into account the interest of ''communities'' and that FRA ''work in partnership with affected communities to provide technical assistance and * * * a reasonable amount of time for local communities to install SSMs.'' Given this statutory directive, FRA is unwilling to exclude local communities from the definition of ''public authority.''

FRA also received comments from Dr. Robert Johnson, a resident of Houston, Texas, who recommended that the rule be revised to empower citizens to designate quiet zones. However, FRA is unwilling to expand the definition of ''public authority'' to include individuals. This final rule requires public authorities to take certain steps during the quiet zone development process for which State and local governments are uniquely suited, given the need to coordinate State and local efforts to improve high-risk crossings. If FRA were to empower individuals to create quiet zones in their neighborhoods, it would become exceedingly difficult to keep track of the quiet zone development process and to ensure that the proper notifications of quiet zone continuation/establishment have been made.

Section 222.38 Can a Quiet Zone Be Created in the Chicago Region?

This section has been added to the final rule to provide clarification as to the effect of the final rule in the Chicago Region. As stated in § 222.3(c) of this part, the final rule will not apply to any highway-rail grade crossing in the Chicago Region where the railroad was excused from sounding the locomotive horn by the Illinois Commerce Commission, and where the railroad did

not sound the horn, as of December 18, 2003 (the publication date of the Interim Final Rule). Therefore, the horn sounding requirements set forth in § 222.21 will not apply to these crossings. On the other hand, pending the Chicago Region data re-analysis discussed in ''Chicago Regional Issues'' (**SUPPLEMENTARY INFORMATION**, section 7), public authorities who would otherwise have been authorized to include these crossings in a new duly created quiet zone may no longer do so.

Public authorities may establish New Quiet Zones and/or New Partial Quiet Zones in the Chicago Region. However, any New Quiet Zone or New Partial Quiet Zone established in the Chicago Region cannot include any highway-rail grade crossing described in § 222.3(c) of this part.

Section 222.39 How Is a Quiet Zone Established?

This section addresses the manner in which a quiet zone may be established. In the NPRM, FRA proposed two different methods of establishing quiet zones. In one method, every public grade crossing within the proposed quiet zone would have an SSM applied to the crossing and the governmental entity establishing the quiet zone would be required to designate the perimeters of the quiet zone, install the SSMs, and comply with various notice and information requirements set forth in the rule. The second proposed method (which was ultimately adopted) would provide a governmental entity greater flexibility in using SSMs and ASMs to address problem crossings. The second method allows FRA to consider quiet zones that do not have SSMs at every crossing, as long as implementation of the proposed SSMs and ASMs in the quiet zone as a whole would cause a reduction in risk to compensate for the absence of routine sounding of the locomotive horn.

FRA received a number of comments that were critical of the corridor approach to risk reduction, including comments from the Ohio Rail Development Commission, the Ohio Railroad Association, the Metropolitan Transit Authority, and the AAR. FRA also received comments from Ohio Congressman Dennis Kucinich, the New York Department of Transportation, the Missouri Department of Transportation, and the Florida Department of Transportation recommending that the rule be revised to establish a maximum risk threshold for individual grade crossings.

FRA is, however, committed to providing a flexible approach to quiet zone establishment. Even though the final rule does not require public authorities to install SSMs at the highest-risk crossings with quiet zones, FRA expects that many public authorities will install SSMs at those crossings, regardless of any obvious safety-motivated reasons for doing so. By installing an SSM at the highest-risk crossing within a proposed quiet zone corridor, the public authority will gain a higher overall risk reduction than that which would result from the installation of a similar SSM at a low-risk crossing.

It should also be noted that FRA retains the right to review the status of any quiet zone under § 222.51(c). If risk dramatically increases within a quiet zone, FRA may require the installation of additional safety improvements or terminate the quiet zone after providing an opportunity for comment. Should immediate action be required, FRA also reserves the right to exercise its emergency authority under 49 U.S.C. 20104 and 49 CFR Part 211, by issuing an order to immediately resume routine locomotive horn sounding at specific grade crossings.

Paragraph (a) of this section addresses situations in which the public authority may designate a quiet zone without the need for formal application to, or approval by, FRA. Paragraphs (a)(1) and (a)(2) have not been revised in the final rule. However, paragraph (a)(3), which provides that a quiet zone can be established by implementing SSMs that are sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Risk Index With Horns, has been revised in the final rule to substitute the defined term ''Risk Index With Horns'' for language that had been used in the interim final rule to provide an explanation of this standard.

FRA has revised the rule to give railroads and State agencies the opportunity to play a greater role during the quiet zone development process. Therefore, paragraph (b)(1) of this section, which provides a list of required documentation for public authority applications for quiet zone approval, now requires that the application include a statement describing the public authority's efforts to work with all affected railroads and the State agency responsible for grade crossing safety, as well as a list of any objections that may have been raised to the proposed quiet zone by the railroad(s) and State agency.

Paragraph (b)(1)(i) requires public authorities to submit an accurate, complete, and current Grade Crossing Inventory Form for each public and private grade crossing. FRA would like to clarify that FRA is not requiring that Grade Crossing Inventory Forms be submitted to, and processed by, FRA's designated contractor before submission. Given the fact that it can take up to three months to process a Grade Crossing Inventory Form, FRA will accept copies of Grade Crossing Inventory Forms that have been submitted for processing, provided all entries on the Grade Crossing Inventory Form have been completed.

Paragraph (b)(2) specifically addresses quiet zone application requirements for newly established public and private highway-rail grade crossings. This paragraph has been added to the final rule in response to comments received from the Chicago Area Transportation Study and the Chicago Department of Transportation, which noted that there are locations in the Chicago Region where extensions of rail lines are expected to result in new grade crossings. The Chicago Area Transportation Study and the Chicago Department of Transportation requested that FRA waive the half-mile minimum length requirement imposed by § 222.35(a)(1) for these crossings. After considering these comments, as well as the implications of creating a quiet zone with newly established grade crossings, FRA has added a paragraph to the final rule that sets forth additional data requirements for each newly established grade crossing that will be included in the proposed quiet zone. Thus, paragraph (b)(2) of this section requires public authorities to submit five-year projected vehicle and rail traffic counts for newly established public and private grade crossings, in addition to the documentation required by paragraph (b)(1) of this section, as part of the public authority's application package.

FRA has, however, decided not to waive the half-mile minimum length requirement, imposed by § 222.35(a)(1), regarding newly established grade crossings. In FRA's experience, rail line extensions often exceed one-half mile in length. Therefore, this half-mile minimum length requirement should not present a substantial obstacle to the creation of quiet zones that contain newly established grade crossings. Should a public authority wish to create a quiet zone that is less than one-half mile in length, the public authority may file a petition for a waiver in accordance with § 222.15.

Paragraph (b)(3) has been added to the final rule in response to comments requesting a greater role for State agencies in the quiet zone development process. As discussed earlier in the analysis of § 222.17, the Ohio Public Utilities Commission and the California Public Utilities Commission recommended that the interim final rule

be revised to require State agency review and approval of all proposed quiet zones. The North Carolina Department of Transportation recommended that the interim final rule be revised to allow State departments of transportation to serve as clearinghouses for quiet zone requests or, in the alternative, to require public authorities to seek formal state and railroad input on quiet zone proposals. The City of Saint Paul, Minnesota also submitted comments recommending that the interim final rule be revised to assign technical resource/review responsibility to the State rail authority to ensure accuracy and uniformity of quiet zone applications.

FRA also received a number of comments from the railroad industry requesting that the final rule be revised to allow railroads to provide input during the quiet zone development process. The Fort Worth & Western Railroad, New Orleans & Gulf Coast Railroad, and the Idaho Northern & Pacific Railroad submitted comments suggesting that the rule be revised to establish a proactive review process for railroad input on the potential impact of proposed quiet zones. The Florida East Coast Railway submitted comments recommending that the rule be revised to require railroad and state government involvement during the quiet zone development process. Asserting that the interim final rule fails to provide for any meaningful input by State authorities or railroads during the quiet zone development process, the Metropolitan Transit Authority also submitted comments recommending that the rule be revised to allow for participation by the State and railroads during the quiet zone evaluation and decision-making process, in order to facilitate consideration of relevant information. The Association of American Railroads submitted comments expressing its strong objection to failure of the interim final rule to provide railroads that own or operate over grade crossings within a proposed quiet zone the opportunity to provide input.

After considering these comments, FRA has revised the rule by providing an opportunity for State agencies and railroads to review and provide input on the public authority application for FRA approval, in accordance with the procedures set forth in paragraph (b)(3). Under the terms of this paragraph, copies of the public authority application shall be provided, by certified mail, return receipt requested, to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator. Any party that receives a copy of the public authority application may then submit comments on the public authority application to the Associate Administrator during the 60-day period after the date on which the application was mailed. However, this 60-day comment period can be waived if the public authority application includes written statements from each affected railroad, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety stating that the railroad, vehicular traffic authority and State agencies have waived their rights to provide comments on the public authority application.

Paragraph (b)(4) addresses the Associate Administrator's decisions on quiet zone applications. After reviewing any comments submitted during the 60-day comment period established by paragraph (b)(3) of this section, the Associate Administrator will approve the quiet zone if the public authority has complied with the requirements established by this paragraph (b) and has satisfactorily demonstrated that the proposed SSMs and ASMs will result in a Quiet Zone Risk Index that is at, or below, the Risk Index With Horns or the Nationwide Significant Risk Threshold. However, the Associate Administrator may include conditions in the decision of approval that are necessary, in the Associate Administrator's judgment, to ensure that the proposed safety improvements are effective. If the Associate Administrator does not approve the quiet zone application, the reasoning behind the Associate Administrator's decision will be provided to the public authority. Copies of the Associate Administrator's decision shall be provided to all parties listed in paragraph (b)(3)(i) of this section.

This paragraph (b)(4) has been revised in the final rule to give railroads an opportunity to petition the Associate Administrator to reconsider his/her decision to approve a quiet zone application. Under the interim final rule, only the public authority could request reconsideration of the Associate Administrator's decisions on quiet zone applications. Under this final rule, the public authority and the railroad may petition the Associate Administrator to reconsider his/her decision to approve or deny a quiet zone application, on the basis that the Associate Administrator improperly exercised his/her judgment in finding that the proposed SSMs and ASMs would, or would not, result in a Quiet Zone Risk Index that is at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold. Petitions for reconsideration may be filed with the Associate Administrator in accordance with §§ 222.57(b) and (d).

Paragraph (c) of this section has not been revised in the final rule.

Section 222.41 How Does This Rule Affect Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones?

This section addresses the effect of this rule on Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones. A Pre-Rule Quiet Zone is a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003. A Pre-Rule Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns for a specified period of time during the evening and/or nighttime hours, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads for a specified period of time during the evening and/or nighttime hours, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003.

FRA received a number of comments seeking clarification of the rule's treatment of pre-existing partial whistle bans. Noting that it had adopted a partial whistle ban in 1993 that prohibits the routine sounding of the locomotive horn between the hours of 10 p.m. and 7 a.m., the City of Plymouth, Minnesota requested that FRA treat pre-existing partial whistle bans ''just like other Pre-Rule bans.'' The City of Highland Park, Illinois also submitted comments asserting that

partial whistle ban communities should be granted Pre-Rule Quiet Zone status. On the other hand, the City of Sacramento, California, which has a partial ban on the routine sounding of locomotive horns between the hours of 6 p.m. and 7 a.m., requested that FRA establish a lower target risk index for partial Pre-Rule Quiet Zones. Noting that two communities in DuPage County have pre-existing partial whistle bans, the Chicago Area Transportation Study recommended that the same standards and procedures already in place be applied to part-time Quiet Zones. Additionally, the Chicago Area Transportation Study recommended that FRA allow existing partial whistle bans to remain in effect until they could meet the standards for 24-hour Quiet Zones.

On the other hand, the AAR urged FRA to prohibit the continuation of pre-existing partial whistle bans that are based on temporary crossing closures. AAR argued that, at the very least, these grade crossings should not be allowed to qualify for quiet zone status by comparison to the Nationwide Significant Risk Threshold because the Nationwide Significant Risk Threshold does not accurately reflect the average risk level for the time period within which temporary crossing closures are in effect. AAR asserted that an average risk level for partial whistle bans would necessarily be lower than the Nationwide Significant Risk Threshold.

After considering these comments, FRA decided to adopt an approach similar to that which was recommended by the City of Plymouth, Massachusetts and the Chicago Area Transportation Study, whereby Pre-Rule Partial Quiet Zones will be treated in a manner similar to 24-hour Pre-Rule Quiet Zones. Therefore, communities with Pre-Rule Partial Quiet Zones that do not qualify for automatic approval will be given additional time within which to meet the standards set for 24-hour Pre-Rule Quiet Zones, provided the public authority complies with the requirements set forth in § 222.41(b).

FRA has not established a lower risk threshold for Pre-Rule Partial Quiet Zones. FRA remains confident that Pre-Rule Quiet Zones that have Quiet Zone Risk Indices that are at, or below, either the Nationwide Significant Risk Threshold or two times the Nationwide Significant Risk Threshold with no relevant accidents over the past five years constitute a category of highway-rail grade crossings that do not present a significant risk with respect to loss of life or serious personal injury.

It should be noted that the Nationwide Significant Risk Threshold does not reflect the average level of risk at crossings at which the locomotive horn is silenced. Rather, the Nationwide Significant Risk Threshold reflects the average level of risk at crossings at which the locomotive horn is *routinely sounded*. Therefore, the formula used to calculate the Nationwide Significant Risk Threshold would not produce a lower risk level for crossings at which the locomotive horn is silenced during the evening/nighttime hours.

Paragraph (a) of this section addresses the establishment of Pre-Rule Quiet Zones by automatic approval. This paragraph was revised in the final rule to extend the cut-off date for relevant collisions to April 27, 2005. This revision has been made to ensure that any relevant collisions that occur between the publication dates of the interim final rule and the final rule are included in any determinations on this issue. This paragraph has also been revised to allow Pre-Rule Quiet Zones to be established by automatic approval if the Quiet Zone Risk Index is at or below the Risk Index With Horns. This revision has been made to accommodate those Pre-Rule Quiet Zone communities that will be able to meet the Risk Index With Horns by obtaining risk reduction credit for pre-existing SSMs. Lastly, this paragraph has also been revised to require the public authority to provide Notice of Quiet Zone Establishment, in accordance with § 222.43, on or before December 24, 2005. After December 24, 2005, all Pre-Rule Quiet Zones must be established in accordance with paragraph (c) of this section.

Paragraph (b) has been added to the final rule to address the establishment of Pre-Rule Partial Quiet Zones by automatic approval. Pre-Rule Partial Quiet Zones are similar to Pre-Rule Quiet Zones because they have a collision history, unlike New Quiet Zones, that can be analyzed to determine the safety effect of silencing the horn at the crossings within the quiet zone. Therefore, FRA will allow Pre-Rule Partial Quiet Zones that are established by automatic approval under paragraph (b) of this section to remain in effect. Pre-Rule Partial Quiet Zones can be established by automatic approval if, in addition to §§ 222.35 and 222.43, the quiet zone is in compliance with one of the following conditions: (1) There are SSMs at every public highway-rail grade crossing within the quiet zone; (2) if the Quiet Zone Risk Index as last published by FRA is at, or below, the Nationwide Significant Risk Threshold; (3) if the Quiet Zone Risk Index as last published by FRA is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the past five years; or (4) if the Quiet Zone Risk Index as last published by FRA is at, or below, the Risk Index With Horns. It should be noted that, for purposes of Pre-Rule Partial Quiet Zones, collisions that occurred during the time period within which the locomotive horn was routinely sounded are not considered ''relevant collisions.''

This paragraph also requires the public authority to provide Notice of Quiet Zone Establishment, in accordance with § 222.43, on or before December 24, 2005. After December 24, 2005, all Pre-Rule Partial Quiet Zones must be established in accordance with paragraph (c) of this section.

Paragraph (c) addresses those Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that will not be established by automatic approval. This paragraph has been revised in the final rule to include Pre-Rule Partial Quiet Zones, to adjust the three- and five-year grace periods to correspond to the final rule effective date, and to provide a reference to other relevant Pre-Rule Quiet Zone and Pre-Rule Partial Quiet Zone requirements. Paragraph (c)(1) provides that a public authority may decide to continue Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones on an interim basis under the provisions of this paragraph. Continuation of a quiet zone beyond the periods specified in this paragraph will require implementation of SSMs or ASMs as though the quiet zone is a New Quiet Zone (in accordance with § 222.39 (''How is a quiet zone established?'')) and compliance with the requirements set forth in §§ 222.25(c), 222.27(d), and 222.35.

Paragraph (c)(2)(i) provides that a public authority may continue a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone for five years from the effective date of the final rule. This 5-year grace period should ensure that the public authority has adequate time for planning and implementation of SSMs or ASMs. This five-year extension is, however, dependent on the public authority filing a detailed plan for establishing a quiet zone under this part. If the proposed quiet zone will require approval under § 222.39(b), the plan must include all the required elements of filings under that paragraph together with a timetable for implementation of the safety improvements. The plan must be filed by June 24, 2008. FRA understands that, in some cases, plans filed in accordance with this paragraph will be contingent

on funding arrangements that may not be complete as of the date of filing (particularly where State-level participation has been requested). FRA is seeking a good faith filing, which normally would be tendered by the executive head of the relevant public authority or authorities involved.

Paragraph (c)(2)(ii) specifically addresses those situations in which, during the three-year period following the final rule effective date, the Quiet Zone Risk Index for its Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone has dropped to a level at or below the Nationwide Significant Risk Threshold. In these situations, the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone may remain in effect without any additional safety improvements, provided the public authority provides notification of Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone establishment in accordance with § 222.43 and has complied with the requirements of §§ 222.25(c), 222.27(d) and 222.35(c) on or before June 24, 2008.

Thus, the practical implication of paragraph (c)(2) is that a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone may continue for three years from the effective date of the final rule without the installation of any improvements by the public authority. In addition, should the Quiet Zone Risk Index for the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone fall to a level at or below the Nationwide Significant Risk Threshold during this three-year grace period, the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone may remain in effect, provided the public authority provides notification of quiet zone establishment in accordance with § 222.43 and has complied with the requirements set forth in §§ 222.25(c), 222.27(d) and 222.35 on or before June 24, 2008. However, if the Quiet Zone Risk Index for the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone does not fall to a level at or below the Nationwide Significant Risk Threshold by the end of the three-year grace period, locomotive horns shall resume sounding at all public crossings within the former quiet zone, unless the public authority has filed a detailed plan for completing the necessary safety improvements.

If certain conditions are met, paragraph (c)(3) states that locomotive horn restrictions may continue for three years beyond the five-year period permitted under paragraph (c)(2). The appropriate State agency must provide to the Associate Administrator a comprehensive State-wide implementation plan and funding commitment, by June 24, 2008, for implementing improvements at Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones. (These improvements must, when implemented, enable the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone to qualify for quiet zone status under this rule.) In addition, physical improvements must have been initiated at one of the crossings within the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone, or the State agency must have participated in quiet zone improvements in one or more jurisdictions elsewhere in the State, by June 24, 2009. FRA wishes to emphasize that the requirement for a plan and some funding participation is not intended to restrict any State to a single approach for addressing this need. By June 24, 2008, for instance, a State agency might have in place a broad policy for providing technical assistance to communities interested in continuing Pre-Rule Quiet Zones, along with sufficient identified funding to participate in the initial improvement required by June 24, 2009. It is not intended that the State agency assume general financial responsibility for this program unless the State elects to do so. Rather, the additional three-year grace period provided by this provision is intended to encourage State assistance of whatever appropriate type and to create an incentive for the State to contribute to improvements in any jurisdiction where environmental justice issues are prevalent.

Paragraph (c)(4), which has not been revised in the final rule, states that if the safety improvements planned for the quiet zone will require FRA approval, the public authority should apply for such approval prior to December 24, 2007, to ensure that FRA will have ample time to review such application prior to the end of the three-year extension period.

Paragraph (d), which addresses Pre-Rule Partial Quiet Zones that will be converted to 24-hour quiet zones, has been added in response to comments received on the rule. The Minnesota Department of Transportation submitted comments asserting that communities should be entitled to convert their Pre-Rule Partial Quiet Zones into full quiet zones, if they so choose. The Township of Montclair, New Jersey also submitted comments requesting that the final rule address the Pre-Rule Quiet Zone status implications of converting a Pre-Rule Partial whistle ban into a 24-hour whistle ban. FRA has decided to allow communities to convert their Pre-Rule Partial Quiet Zones into 24-hour quiet zones, if the quiet zone complies with the New Quiet Zone requirements set forth in §§ 222.25, 222.27, 222.35 and 222.39, and the public authority provides notification of the establishment of a New 24-hour Quiet Zone in accordance with § 222.43. FRA is requiring public authorities to meet these requirements because Pre-Rule Partial Quiet Zones do not have collision histories that reflect the increased risk that will result from silencing the routine use of the locomotive horn for 24 hours.

Section 222.42 How Does This Rule Affect Intermediate Quiet Zones and Intermediate Partial Quiet Zones?

This section addresses the effect of this rule on Intermediate Quiet Zones and Intermediate Partial Quiet Zones. An Intermediate Quiet Zone is a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of December 18, 2003, but not as of October 9, 1996. An Intermediate Partial Quiet Zone is a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns for a specified period of time during the evening or nighttime hours, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads for a specified period of time during the evening and/or nighttime hours, and at which such statutes, ordinances or agreements were in place and enforced or observed as of December 18, 2003, but not as of October 9, 1996.

This section has been added to the final rule in response to comments expressing concern that the interim final rule does not address the needs of communities that enacted whistle bans after October 9, 1996. Steven Klafka, resident of Madison, Wisconsin, submitted comments recommending that the final rule extend the cutoff date for Pre-Rule Quiet Zone status to include the Madison whistle ban that was adopted in 2001. The Town of Newbury, Massachusetts, which enacted a whistle ban after commuter rail service resumed in October 1998, also asserted that communities that had established whistle bans as of the date of the interim final rule should qualify

for Pre-Rule Quiet Zone status. Alternately, a new category of ''pre-existing'' quiet zones should be added to the rule, which would not be required to meet the stringent risk formulas required of New Quiet Zones. Congressman John Tierney submitted comments requesting special consideration for communities like Newbury that do not qualify for Pre-Rule Quiet Zone status. At the very least, Congressman Tierney asserted that communities like Newbury should be granted a waiver from the rule's effective date and given additional time to comply with the rule. In a similar vein, Massachusetts State Representative Harriett Stanley submitted comments requesting that the interim final rule be amended to either grant Pre-Rule Quiet Zone status to communities like Newbury or to create a new category of quiet zones for these communities.

The Town of Concord, Massachusetts also submitted comments on this issue. Asserting that the October 9, 1996 cutoff date for Pre-Rule Quiet Zones is inequitable, the Town of Concord recommended that the interim final rule be revised to allow all communities with pre-existing whistle bans to qualify for Pre-Rule Quiet Zone status. This position was reiterated in comments submitted by Massachusetts State Representative Doug Atkins and Concord resident Mark Garvey.

After considering these comments, FRA determined that a third quiet zone category should be added to the final rule, which will be referred to as ''Intermediate Quiet Zones'' and ''Intermediate Partial Quiet Zones'', to cover communities like Newbury and Concord that enacted whistle bans after October 9, 1996, which were in place when the interim final rule was issued on December 18, 2003. Intermediate Quiet Zone and Intermediate Partial Quiet Zone communities will be required to meet New Quiet Zone standards, but will be given additional time within which to come into compliance. FRA did not extend full Pre-Rule Quiet Zone treatment because these whistle bans were not in effect when Congress instructed FRA to address the needs of communities that had pre-existing whistle bans on October 9, 1996.

Paragraph (a) provides that a public authority may continue an Intermediate Quiet Zone or Intermediate Partial Quiet Zone on an interim basis, provided notification of quiet zone continuation is provided in accordance with § 222.43. It is, however, important to note that this paragraph only provides interim authority to continue a quiet zone. Continuation of the Intermediate Quiet Zone or Intermediate Partial Quiet Zone beyond June 24, 2006 will require implementation of SSMs or ASMs in accordance with § 222.39 (''How is a quiet zone established?'') and compliance with the New Quiet Zone standards set forth in §§ 222.25, 222.27 and 222.35.

Thus, the practical implications of this timetable is that Intermediate Quiet Zones and Intermediate Partial Quiet Zones may continue until June 24, 2006. Locomotive horns will, however, resume sounding at all public crossings within the former quiet zone, unless the public authority has created a New Quiet Zone or New Partial Quiet Zone by implementing sufficient SSMs and/or ASMs to bring the quiet zone into compliance with § 222.39 and taking the necessary steps to comply with the New Quiet Zone standards set forth in §§ 222.25, 222.27 and 222.35.

Paragraph (b) addresses Intermediate Partial Quiet Zones that will be converted to 24-hour quiet zones. An Intermediate Partial Quiet Zone can be converted into a 24-hour New Quiet Zone by complying with the New Quiet Zone standards set forth in §§ 222.25, 222.27, 222.35 and 222.39, provided notification of intent to create a New Quiet Zone and notification of New Quiet Zone establishment is provided in accordance with § 222.43.

Section 222.43 What Notices and Other Information Are Required To Create or Continue a Quiet Zone?

This section sets forth the requirements that pertain to the four different types of quiet zone notification. The intent of this section is to ensure that interested parties are made aware of quiet zone initiation, continuation, and establishment in a timely manner.

Under paragraph (a)(1) of this section, the public authority is required to provide notification of its intent to create a New Quiet Zone or New Partial Quiet Zone under § 222.39. This notification shall be provided by certified mail, return receipt requested, to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; and the State agency responsible for grade crossing safety. This requirement has been added to the final rule to ensure that railroads and State agencies are given an opportunity to provide comment on proposed quiet zones.

Paragraph (a)(2) requires the public authority to provide notification of its intent to continue a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone under § 222.41or to continue an Intermediate Quiet Zone or Intermediate Partial Quiet Zone under § 222.42. This notification shall be provided by certified mail, return receipt requested, to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator. Although the interim final rule required public authorities to provide notification of Pre-Rule Quiet Zone continuation, this requirement has been expanded in the final rule to include Pre-Rule Partial Quiet Zones, Intermediate Quiet Zones, and Intermediate Partial Quiet Zones. In addition, the rule has been revised to require the public authority to submit copies of all supporting documentation to each party listed in this paragraph. (Under the interim final rule, some supporting documentation was submitted only to the Associate Administrator.)

Paragraph (a)(3) requires the public authority to provide notification of its intent to file a detailed plan for a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone in accordance with § 222.41. This notification shall be provided by certified mail, return receipt requested, to all railroads operating over the public highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; and the State agency responsible for grade crossing safety. This requirement has been added to the final rule to ensure that railroads and State agencies are given an opportunity to provide comment on proposed improvements to the quiet zone before the detailed plan for quiet zone improvements is filed under § 222.41(c)(2).

Paragraph (a)(4) requires the public authority to provide notification of quiet zone establishment under § 222.39, 222.41(a), or 222.41(b). This notification shall be provided by certified mail, return receipt requested, to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State

agency responsible for grade crossing safety; and the Associate Administrator.

FRA notes that paragraph (a) has been revised in the final rule in response to comments submitted by Kristian Foondle, who discovered a discrepancy between the preamble and the interim final rule text, which failed to include the State agency responsible for grade crossing safety in the list of parties to be notified. As it has always been FRA's intention to include the State agency responsible for grade crossing safety in the list of parties that must receive notification, FRA has revised the final rule accordingly.

Paragraph (b) addresses the Notice of Intent that is required for New Quiet Zones and New Partial Quiet Zones. The Notice of Intent has been added to the final rule in response to comments from State agencies and railroads requesting a greater role in the quiet zone development process. (Please refer to the Section-by-Section analysis of § 222.39(b) for a discussion of these comments.) As the issuance of the Notice of Intent will give State agencies and railroads an opportunity to provide input to the public authority on the proposed quiet zone, FRA strongly encourages public authorities to provide written notification of their intent to create quiet zones as early in the quiet zone development process as possible.

Paragraph (b)(1) provides a list of documents that must be included in the Notice of Intent. Paragraph (b)(1)(i) states that the public authority must provide a list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing that would be included in the proposed quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. This requirement, which was revised in the final rule to include pedestrian crossings, will help parties identify crossings that would be affected by the proposed quiet zone. Paragraph (b)(1)(ii) states that the Notice of Intent must contain a statement of the time period within which restrictions would be imposed on the routine sounding of the locomotive horn. (It should be noted that New Partial Quiet Zones may only restrict locomotive horn use between the hours of 10 p.m. and 7 a.m.) This requirement will help parties determine the type of quiet zone that is being proposed. Paragraph (b)(1)(iii) states that the Notice of Intent shall contain a brief explanation of the public authority's tentative plans for implementing improvements within the proposed quiet zone. This explanation should contain information on the types of SSMs and/or ASMs that may be utilized. FRA also encourages the public authority to provide a specific reference to the regulatory provision that would provide the basis for quiet zone creation, if known. Paragraph (b)(1)(iv) states that the Notice of Intent shall provide the name and address of the person who will act as the point of contact during the quiet zone development process, as well as the manner in which that person can be contacted. This designated person shall accept comments, if any, on the proposed quiet zone from State agencies and/or railroads. Paragraph (b)(1)(v) requires that the Notice of Intent include a list of all of the parties that will receive notification in accordance with paragraph (a)(1) of this section.

Paragraph (b)(2), which has been added to the final rule, establishes a 60-day comment period on the Notice of Intent. This comment period was added in response to comments requesting that the rule be revised to provide opportunities for State agencies and railroads to provide input during the quiet zone development process. Under paragraph (b)(2)(i), any party that receives a copy of the Notice of Intent may submit information or comments about the proposed quiet zone to the public authority during the 60-day period after the date on which the Notice of Intent was mailed. Even though the public authority would be well advised to carefully consider any thoughtful and well-reasoned comments received, FRA will not require the public authority to take any action in response. This 60-day comment period may terminate, under paragraph (b)(2)(ii), when the public authority obtains either written comments or ''no-comment'' statements from each railroad operating over public grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety.

Paragraph (c) addresses the Notice of Quiet Zone Continuation. The interim final rule required public authorities to provide notice of the continuation of Pre-Rule Quiet Zones, but the scope of this requirement has been expanded in the final rule to include Pre-Rule Partial Quiet Zones, Intermediate Quiet Zones and Intermediate Partial Quiet Zones. Paragraph (c)(1)(i) states that, in order to prevent the resumption of locomotive horn sounding on June 24, 2005, the Notice of Quiet Zone Continuation shall be served no later than June 3, 2005. However, if the Notice of Quiet Zone Continuation is mailed after June 3, 2005, paragraph (c)(1)(ii) states that the Notice of Quiet Zone Continuation shall state the date on which locomotive horn use at highway-rail grade crossings within the quiet zone shall cease, but in no event shall that date be earlier than 21 days after the date of mailing. This requirement should ensure that railroads receive notification of quiet continuation at least 21 days before the horn sounding requirements of this rule take effect, so that railroads will have enough time to notify their locomotive engineers of quiet zone locations.

Paragraph (c)(2) provides a list of documents that must be provided in each Notice of Quiet Zone Continuation. The final rule has been revised to require the public authority to submit copies of all documentation to each party listed in paragraph (a)(2) of this section. This revision should facilitate the transfer of information about the quiet zone to the parties that will be most affected by it.

Paragraph (c)(2)(i) states that the public authority must provide a list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. This paragraph was revised in the final rule to include pedestrian crossings. Paragraph (c)(2)(ii) states that Notice must contain a specific reference to the regulatory provision that provides the basis for quiet zone continuation, while paragraph (c)(2)(iii) requires that the Notice contain a statement of the time period within which restrictions will continue to be imposed on the routine sounding of the locomotive horn. This statement should indicate whether restrictions are imposed on a 24-hour basis or merely during the nighttime hours. If restrictions are imposed during the nighttime hours, the statement must provide the specific times at which the restrictions will begin and end.

Paragraph (c)(2)(iv) requires the public authority to submit, to each party listed in paragraph (a)(2), an accurate and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing that reflects conditions currently existing at the crossing. The interim final rule required public authorities to submit an accurate and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing dated within six months of quiet zone designation or FRA approval. This paragraph has, however, been revised to include pedestrian crossings. In addition, the six-month limitation has been removed based on comments

received from SEH, Inc., which asserted that the six-month requirement was burdensome because some states and railroads perform mass updates only a few times a year. Therefore, under the final rule, FRA will accept copies of accurate and complete Grade Crossing Inventory Forms, even if the forms are more than six months old, provided they reflect conditions that currently exist at the crossing.

FRA would like to clarify that FRA is not requiring that Grade Crossing Inventory Forms be submitted to, and processed by, FRA's contractor before submission. Given the fact that it can take up to three months to process a Grade Crossing Inventory Form, FRA will accept copies of Grade Crossing Inventory Forms that have been submitted to FRA's contractor for processing, provided all entries on the Grade Crossing Inventory Form have been completed.

Paragraph (c)(2)(v) requires the public authority to provide the name and address of the person responsible for monitoring compliance with the requirements of this part, as well as the manner in which that person can be contacted. Paragraph (c)(2)(vi) requires the public authority to provide a list of parties that will receive notification in accordance with paragraph (a)(2) of this section. Please note that this requirement has been revised in the final rule to require the public authority to provide a list of the names, as well as the addresses, of each party that will be notified in accordance with paragraph (a)(2) of this section.

Paragraph (c)(2)(vii) requires each public authority to submit a statement from its chief executive officer. This requirement has been revised in the final rule to require that the chief executive officer's statement include a certification that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

Paragraph (d) addresses the Notice of Detailed Plan that is required for Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that did not qualify for automatic approval under § 222.41. The Notice of Detailed Plan was added to the final rule in response to comments from State agencies and railroads requesting a greater role in the quiet zone development process. (Please refer to the Section-by-Section analysis of § 222.39(b) for a discussion of these comments.)

Paragraph (d)(1) states that the Notice of Detailed Plan must be served no later than four months before the filing of the detailed plan under § 222.41(c)(2). This requirement should ensure that State agencies and railroads are given an opportunity to provide input on proposed crossing improvements before the detailed plan is filed.

Paragraph (d)(2) provides a list of documents that must be included in the Notice of Detailed Plan. Paragraph (d)(2)(i) states that the public authority must provide a list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing that will be included in the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. Paragraph (d)(2)(ii) states that the Notice of Detailed Plan shall contain a statement of the time period within which restrictions would be imposed on the routine sounding of the locomotive horn. This statement should indicate whether restrictions are imposed on a 24-hour basis or merely during the nighttime hours. If restrictions are imposed during the nighttime hours, the statement must provide the specific times at which the restrictions will begin and end.

Paragraph (d)(2)(iii) states that the Notice of Detailed Plan shall contain a brief explanation of the public authority's tentative plans for implementing improvements within the proposed quiet zone. This explanation should contain information on the types of SSMs and/or ASMs that may be utilized. FRA also encourages the public authority to provide a specific reference to the regulatory provision that would provide the basis for quiet zone creation, if known. Paragraph (d)(2)(iv) states that the Notice of Detailed Plan must provide the name and address of the person who will act as the point of contact during the quiet zone development process, as well as the manner in which that person can be contacted. This designated person shall accept comments, if any, on the proposed crossing improvements from State agencies and/or railroads. Paragraph (d)(2)(v) requires that the Notice of Detailed Plan include a list of all of the parties that will receive notification in accordance with paragraph (a)(3) of this section.

Paragraph (d)(3) establishes a 60-day comment period on the Notice of Detailed Plan. This comment period was added in response to comments requesting that the rule be revised to provide opportunities for State agencies and railroads to provide input during the quiet zone development process. Thus, any party that receives a copy of the Notice of Detailed Plan may submit information or comments about the proposed crossing improvements to the public authority during the 60-day period after the date on which the Notice of Detailed Plan was mailed. Even though the public authority would be well advised to carefully consider any thoughtful and well-reasoned comments received, FRA will not require the public authority to take any action in response.

Paragraph (e) addresses the Notice of Quiet Zone Establishment. As stated in paragraph (a)(4), FRA is requiring public authorities to provide notice of quiet zone establishment for New Quiet Zones and New Partial Quiet Zones established under § 222.39, Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that qualify for automatic approval under § 222.41(a) or 222.41(b), and Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that did not qualify for automatic approval under § 222.41.

Paragraph (e)(1) governs the timing of the Notice of Quiet Zone Establishment. Paragraph (e)(1)(i) retains the interim final rule requirement that the Notice of Quiet Zone Establishment shall provide the date upon which routine locomotive horn use at highway-rail grade crossings shall cease, but in no event shall the date be earlier than 21 days after the date on which the Notice was mailed.

Paragraph (e)(1)(ii) states that if the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, the Notice of Quiet Zone Establishment shall not be mailed less than 60 days after the mailing of the Notice of Intent, unless the Notice of Quiet Zone Establishment contains a written statement affirming that written comments and/or ''no-comment'' statements have been received from each railroad operating over public grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety in accordance with paragraph (b)(2)(ii) of this section. This requirement has been added to the rule to ensure that State agencies and railroads are given an opportunity to provide comment on the Notice of Intent before the Notice of Quiet Zone Establishment is issued.

Paragraph (e)(2) provides a list of documents that must be provided in each Notice of Quiet Zone Establishment. The final rule has been revised to require the public authority to submit copies of all documentation to each party listed in paragraph (a)(4) of this section. This revision should facilitate the transfer of information about the quiet zone to the parties that will be most affected by it.

Paragraph (e)(2)(i) states that the Notice of Quiet Zone Establishment shall include a list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. This paragraph has been revised to include pedestrian crossings. Paragraph (e)(2)(ii) states that Notice shall contain a specific reference to the regulatory provision that provides the basis for quiet zone establishment. This paragraph has, however, been revised to require public authorities to provide greater specificity when citing § 222.41 as the regulatory basis for quiet zone establishment. Paragraph (e)(2)(ii) also contains additional documentation requirements that are linked to the specific regulatory provision cited in the Notice. If the Notice contains a specific reference to § 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv), the Notice shall contain a copy of the FRA web page that reflects the quiet zone data upon which the public authority is relying. On the other hand, if the Notice includes a specific reference to § 222.39(b), it shall contain a copy of FRA's notification of approval. If a diagnostic team review was required under § 222.25 or 222.27, paragraph (e)(2)(iii) states that the Notice shall contain a statement from the public authority affirming that the State agency responsible for grade crossing safety and all affected railroads were provided an opportunity to participate in the diagnostic team review. The Notice shall also contain a list of recommendations made by the diagnostic team.

Paragraph (e)(2)(iv) requires that the Notice contain a statement of the time period within which restrictions will be imposed on the routine sounding of the locomotive horn. This statement should indicate whether restrictions will be imposed on a 24-hour basis or merely during the nighttime hours. If restrictions will be imposed during the nighttime hours, the statement must provide the specific times at which the restrictions will begin and end. (It should be noted that New Partial Quiet Zones may only restrict locomotive horn use between the hours of 10 p.m. and 7 a.m.)

Paragraph (e)(2)(v) requires the public authority to submit, to each party listed in paragraph (a)(2), an accurate and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects the conditions existing at the crossing before any new SSMs or ASMs were implemented. (''New'' SSMs are those SSMs that do not meet the definition of ''pre-existing SSMs.'') The interim final rule required public authorities to submit an accurate and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing dated within six months of quiet zone designation or FRA approval. This paragraph has, however, been revised to include pedestrian crossings. In addition, the six-month limitation has been removed in response to comments from SEH, Inc, which asserted that the six-month requirement was burdensome because some states and railroads perform mass updates only a few times a year. Therefore, under the final rule, FRA will accept copies of accurate and complete Grade Crossing Inventory Forms, even if the forms are more than six months old.

Paragraph (e)(2)(vi) requires the public authority to submit, to each party listed in paragraph (a)(4), an accurate, complete and current Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects SSMs and ASMs in place upon establishment of the quiet zone. SSMs and ASMs that cannot be fully described on the Inventory Form shall be separately described. This paragraph has been revised to include pedestrian crossings.

FRA would like to clarify that FRA is not requiring that Grade Crossing Inventory Forms be submitted to, and processed by, FRA's contractor before submission. Given the fact that it can take up to three months to process a Grade Crossing Inventory Form, FRA will accept copies of Grade Crossing Inventory Forms that have been submitted to FRA's contractor for processing, provided all entries on the Grade Crossing Inventory Form have been completed.

Paragraph (e)(2)(vii) states that if the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, the Notice of Quiet Zone Establishment shall contain a statement affirming that the Notice of Intent was, in fact, provided in accordance with paragraph (a)(1) of this section. This statement shall also state the date on which the Notice of Intent was mailed.

If the Notice of Quiet Zone Establishment was, however, mailed less than 60 days after the date on which the Notice of Intent was mailed, paragraph (e)(2)(viii) states that the Notice of Quiet Zone Establishment shall also contain a written statement, in accordance with paragraph (e)(1)(ii), affirming that written comments and/or ''no comment'' statements have been received from each railroad operating over public grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety in accordance with paragraph (b)(2)(ii) of this section.

Paragraph (e)(2)(ix) states that if the public authority was required to provide a Notice of Detailed Plan in accordance with paragraph (a)(3) of this section, the Notice of Quiet Zone Establishment shall contain a statement affirming that the Notice of Detailed Plan was, in fact, provided in accordance with paragraph (a)(3) of this section. This statement shall also state the date on which the Notice of Detailed Plan was mailed.

Paragraph (e)(2)(x) requires the public authority to provide the name and address of the person responsible for monitoring compliance with the requirements of this part, as well as the manner in which that person can be contacted. Paragraph (e)(2)(xi) requires the public authority to provide a list of parties that will receive notification in accordance with paragraph (a)(4) of this section. Please note that this requirement has been revised in the final rule to require the public authority to provide a list of the names, as well as the addresses, of each party that will be notified in accordance with paragraph (a) of this section.

Paragraph (e)(2)(xii) requires each public authority to submit a statement from its chief executive officer. This requirement has been revised in the final rule to require that the chief executive officer's statement include a certification that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

Section 222.45 When Is a Railroad Required To Cease Routine Use of Locomotive Horns at Crossings?

This section was revised in the final rule to provide a more specific reference to the provisions contained within § 222.43 that pertain to the Notice of Quiet Zone Establishment.

Section 222.47 What Periodic Updates Are Required?

The Southern California Regional Rail Authority submitted comments on this section recommending that the rule be revised to require public authorities to submit confirmation of dedicated

funding for non-engineering ASMs in their periodic updates. While FRA encourages public authorities to ensure a dedicated funding source for their non-engineering ASMs, FRA is unwilling to require public authorities to do so. Should a lack of funding negatively impact a non-engineering ASM, the violation rates within the affected quiet zone should increase, which in turn, should motivate the public authority to devote additional resources to the ASM. In addition, FRA reserves the right to review quiet zone status under § 222.51(c), if the Associate Administrator perceives that the safety systems and measures implemented within the quiet zone do not fully compensate for the absence of the locomotive horn.

Paragraphs (a) and (b) of this section have been revised in the final rule to require public authorities to submit updated Grade Crossing Inventory Forms for pedestrian crossings, in addition to the updated Inventory Forms for public and private grade crossings that were required under the interim final rule.

Section 222.49 Who May File Grade Crossing Inventory Forms?

Paragraph (a) of this section was revised in the final rule to clarify that Grade Crossing Inventory Forms required to be filed with the Associate Administrator in accordance with § 222.39 may also be filed by the public authority if, for any reason, such forms are not timely submitted by the State and railroad. However, paragraph (b) of this section has not been revised in the final rule.

The Ohio Rail Development Commission submitted comments noting that the interim final rule did not require State agency review of the Grade Crossing Inventory Forms before submission. The Ohio Rail Development Commission asserted that such review would ensure that accurate data is provided on the Grade Crossing Inventory Form. The California PUC also submitted comments asserting that public authorities should not be allowed to update the Grade Crossing Inventory Form. However, FRA has not revised the rule to require State agency review of Grade Crossing Inventory Forms or to prohibit public authorities from submitting updated Grade Crossing Inventory Forms. Sections 222.43 and 222.47 of the rule, which requires public authorities to submit Grade Crossing Inventory Forms as part of their quiet zone notification packages or periodic updates, also require the public authority to provide copies of these notification packages and periodic updates to the State agency responsible for grade crossing safety. Therefore, State agencies that receive copies of the Grade Crossing Inventory Forms as part of the public authority notification packages and periodic updates can review these Forms and then notify FRA if any inaccurate data is discovered. If substantial data errors are discovered, FRA reserves the right to review quiet zone status under § 222.51(c).

The North Carolina Department of Transportation submitted comments recommending that this section be revised to include penalties and/or sanctions for parties that misrepresent data on the Grade Crossing Inventory Form. FRA has not revised the rule to include specific penalties or sanctions for parties that misrepresent data. However, FRA reserves the right to refer any person for criminal prosecution, under 49 U.S.C. 21311, who knowingly and willfully provides false information during the quiet zone application and/or designation process.

Section 222.51 Under What Conditions Will Quiet Zone Status Be Terminated?

This provision is intended to ensure that quiet zones, while providing for quiet at grade crossings, also continue to provide the level of safety for motorists and rail employees and passengers that existed before the quiet zones were first established, or in the alternative, the level of safety provided by the average gated public crossing where locomotive horns are routinely sounded. In order to ensure this level of safety, FRA will review grade crossing safety data on at least an annual basis. Paragraphs (a) and (b) address annual FRA risk reviews of quiet zones established in comparison to the Nationwide Significant Risk Threshold, while paragraph (c) provides for a review of quiet zone status at FRA's initiative. Paragraph (d) has been added to give public authorities the ability to withdraw their quiet zone status at any time, while addressing the implications of withdrawing from a multi-jurisdictional quiet zone. Paragraphs (e) and (f) address the quiet zone termination process.

Paragraph (a) addresses annual reviews of risk levels at crossings within New Quiet Zones. Paragraph (a)(1) provides that FRA will annually calculate the Quiet Zone Risk Index for New Quiet Zones and New Partial Quiet Zones, if they were established in comparison to the Nationwide Significant Risk Threshold under § 222.39. FRA will also notify the public authority of the Quiet Zone Risk Index for the preceding calendar year. FRA will not, however, perform routine annual risk reviews for New Quiet Zones, or New Partial Quiet Zones that were established by having an SSM at every public grade crossing or by reducing the Quiet Zone Risk Index to the Risk Index With Horns. There is no need to perform annual risk reviews for these types of quiet zones because the quiet zone risk level has been reduced to a level that fully compensates for the absence of the locomotive horn. Paragraph (a)(2) has not been revised in the final rule.

Paragraph (b) addresses annual reviews of risk levels at crossings within Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones. This paragraph has been revised in the final rule to include Pre-Rule Partial Quiet Zones. Paragraph (b)(1) provides that FRA will annually calculate the Quiet Zone Risk Index for two types of Pre-Rule Quiet Zones: each Pre-Rule Quiet Zone that qualified for automatic approval pursuant to §§ 222.41(a)(1)(ii) and 222.41(a)(1)(iii) and each Pre-Rule Partial Quiet Zone that qualified for automatic approval pursuant to §§ 222.41(b)(1)(ii) and 222.41(b)(1)(iii). Paragraph (b)(1) also provides that FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year for each such quiet zone in its jurisdiction. In addition, FRA will notify each public authority if a relevant collision occurred at a grade crossing within the quiet zone during the preceding calendar year. (Again, it should be noted that collisions occurring outside the time period within which the locomotive horn is routinely sounded are not considered ''relevant collisions'' for purposes of Pre-Rule Partial Quiet Zones.)

Paragraph (b)(2) addresses Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that originally qualified for automatic approval pursuant to §§ 222.41(a)(1)(ii) and 222.41(b)(1)(ii). Under paragraph (b)(2)(i), a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone that qualified for automatic approval under § 222.41(a)(1)(ii) or 222.41(b)(1)(ii) may continue unchanged if the Quiet Zone Risk Index, as last calculated by FRA, remains at, or below, the Nationwide Significant Risk Threshold. In addition, under paragraph (b)(2)(ii) of this section, if the Quiet Zone Risk Index as last calculated by FRA is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold and no relevant collisions have occurred at crossings within the quiet zone within the five years preceding the annual risk review, the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone may continue as though it originally received automatic

approval pursuant to § 222.41(a)(1)(iii) or 222.41(b)(1)(iii) of this part. Paragraph (b)(2)(iii) has not been revised in the final rule.

Paragraph (b)(3) addresses Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that originally qualified for automatic approval pursuant to §§ 222.41(a)(1)(iii) and 222.41(b)(1)(iii). Under paragraph (b)(3)(i), a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone that qualified for automatic approval under §§ 222.41(a)(1)(iii) or 222.41(b)(1)(iii) may continue unchanged if the Quiet Zone Risk Index, as last calculated by FRA, remains below twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone during the preceding calendar year. Paragraph (b)(3)(ii) of this section has not been revised in the final rule.

Paragraph (b)(4) of this section has been revised to substitute the term ''Risk Index With Horns'' for the phrase ''a level that fully compensates for the absence of the train horn.''

Asserting that one year of data may not be indicative of a trend, Metra submitted comments on this section, asserting that Pre-Rule Quiet Zone status should be maintained for at least three years regardless of changes to the Nationwide Significant Risk Threshold. However, FRA has not revised the rule to extend the time period between risk reviews for Pre-Rule Quiet Zones. If a public authority is concerned that fluctuations in the Nationwide Significant Risk Threshold may require additional improvements in the near future, then the public authority should consider implementing improvements within the Pre-Rule Quiet Zone that will reduce the QZRI to a level at or below the Risk Index With Horns. By reducing the QZRI to the Risk Index With Horns, the public authority can avoid annual risk reviews and any associated uncertainty.

Paragraph (c) provides that the Associate Administrator may, at any time, review the status of any quiet zone. This section is included in the rule to enable the Associate Administrator to deal with any unforeseen and dramatic increase in risk that may arise in the future. Under this paragraph, if the Associate Administrator makes a preliminary determination that (1) the safety systems and measures implemented within the quiet zone do not fully compensate for the absence of the locomotive horn due to a substantial increase in risk, (2) documentation relied upon to establish the quiet zone contains substantial errors that may have an adverse impact on public safety, or (3) significant risk with respect to the loss of life or serious personal injury exists within the quiet zone, the Associate Administrator will provide written notice of that determination. This notice of determination shall be provided to the public authority, all railroads operating over public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety. The Associate Administrator will also publish a notice of determination in the **Federal Register**.

This paragraph has been revised in the final rule to include those situations in which FRA becomes aware of substantial errors in the documentation that was relied upon when the quiet zone was established. FRA made this revision in response to comments submitted by the AAR, which suggested that FRA explicitly reserve the right to immediately terminate any quiet zone that was improperly implemented. After considering this comment, FRA decided to reserve the right to terminate quiet zones that have been implemented on the basis of significantly misleading information that may adversely impact public safety. Although action by FRA under this section does not immediately terminate the quiet zone, as proposed by the AAR, FRA retains emergency order authority to do so. It should also be noted that FRA reserves the right to refer any person for criminal prosecution under 49 U.S.C. 21311 or 18 U.S.C. 1001, or both, who knowingly and willfully provides false information during the quiet zone application and/or designation process.

FRA would like to provide clarification of the standard that would be applied for any quiet zone risk review in accordance with paragraph (c)(2)(iii) of this section. The DuPage Mayors and Manager Conference and the Chicago Area Transportation Study submitted comments recommending that the rule be revised to draw a distinction between the standard of ''significant risk with respect to loss of life or serious personal injury'' that may be applied during FRA review of a quiet zone and the Nationwide Significant Risk Threshold. After considering these comments, FRA would like to take this opportunity to note that FRA review of quiet zone status under paragraph (c) of this section will not be triggered every time the QZRI rises above the Nationwide Significant Risk Threshold. However, if the Associate Administrator perceives that an existing quiet zone contains an extraordinary level of risk, due to a recent collision, a marked increase in train or vehicular traffic, or a marked increase in train or vehicular speeds, FRA reserves the right to review quiet zone status at its initiative.

Paragraph (c)(3) provides an opportunity to provide comments on the preliminary determination to the Associate Administrator. After considering the comments provided, the Associate Administrator may require that additional safety measures be taken or that the quiet zone be terminated. The final rule has been revised to specifically state that the Associate Administrator will provide a copy of his/her decision to the public authority and all parties listed in paragraph (c)(2) of this section. The public authority may appeal the Associate Administrator's decision by submitting a petition for reconsideration in accordance with § 222.57(c).

Although very unlikely, conditions at any particular crossing or quiet zone could pose such an imminent hazard that the quiet zone termination procedures established by this section become contrary to public safety. Thus, paragraph (c)(3) specifically states that this section is not intended to limit the Administrator's emergency order authority under 49 CFR part 211 or 49 U.S.C. 20104, which provides statutory authority to the Administrator to immediately issue emergency orders ''when an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death or personal injury.''

Paragraph (d) was added to the final rule in response to comments received from the New Jersey Department of Transportation which noted that the interim final rule did not provide a process by which quiet zone status could be withdrawn. Under this paragraph, any public authority that participated in the establishment a quiet zone may, at any time, withdraw its quiet zone status, even if the public authority is part of a multi-jurisdictional quiet zone.

Paragraph (d)(2) establishes the process by which quiet zone status may be terminated by the public authority. Under this paragraph, a public authority may terminate its quiet zone status by providing written notice of quiet zone termination, by certified mail, return receipt requested, to all railroads operating the public highway-rail grade crossings within the quiet zone, the

highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator.

Paragraph (d)(3) specifically addresses situations in which a public authority may wish to withdraw from a multi-jurisdictional quiet zone. Paragraph (d)(3)(i) states that the public authorities responsible for the remaining quiet zones shall provide statements to the Associate Administrator that certify that the Quiet Zone Risk Index for each remaining quiet zone is at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns. These statements shall be provided, no later than six months after the notice of quiet zone termination was mailed, to all parties listed in paragraph (d)(2) of this section.

If any remaining quiet zone has a Quiet Zone Risk Index in excess of the Nationwide Significant Risk Threshold and the Risk Index With Horns, the public authority responsible for that quiet zone shall submit a written commitment, to all parties listed in paragraph (d)(2) of this section, to reduce the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold or the Risk Index With Horns. Included in this commitment statement shall be a discussion of the specific steps to be taken by the public authority to reduce the Quiet Zone Risk Index. This commitment statement shall be provided to all parties listed under paragraph (d)(2) of this section no later than six months after the date on which the notice of quiet zone termination was mailed.

Paragraph (d)(3)(iii) states that failure to comply with paragraph (d)(3)(i) or (d)(3)(ii) of this section (*i.e.*, failure to submit a certification or commitment statement) shall result in termination of the remaining quiet zone(s) six months after the date on which the notice of quiet zone termination was mailed by the withdrawing public authority. Paragraph (d)(3)(iv) states that failure to complete implementation of SSMs and/or ASMs to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns in accordance with the written commitment provided under paragraph (d)(3)(ii) of this section shall result in termination of the remaining quiet zone three years after the date on which the written commitment was received by FRA.

Paragraph (e) establishes the notification process that must be followed when a quiet zone is terminated. This process has been revised in the final rule to require the public authority to provide immediate notification of quiet zone termination by certified mail, return receipt requested, to all railroads operating over public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. The final rule has also been revised to require FRA to provide written notification to all parties listed in paragraph (e)(1) of this section. This provision was, however, added as a safeguard, as the public authority retains primary responsibility for notifying all parties listed in paragraph (e)(1) of the termination of a quiet zone.

Paragraph (f) retains the requirement that railroads begin sounding the locomotive horn at all public highway-rail grade crossings within the former quiet zone within seven days after receiving notice of quiet zone termination.

Section 222.53 What Are the Requirements for Supplementary and Alternative Safety Measures?

This section, through reference to Appendices A and B, lists acceptable SSMs and ASMs. Paragraph (a) states that approved SSMs are listed in appendix A. This paragraph has also been revised in the final rule to state that, with the exception of permanent crossing closures, pre-existing SSMs can qualify for quiet zone risk reduction credit in the manner specified by appendix A. This revision has been made in response to comments requesting that the final rule assign quiet zone risk reduction credit for pre-existing SSMs. For example, Vydas Juskelis, resident of Villa Park, Illinois, submitted comments requesting credit for the medians that the village had installed at two grade crossings in 1998 and 2003. Under this final rule, if the medians installed by the Village of Villa Park comply with the requirements set forth in appendix A, the medians will qualify for quiet zone risk reduction credit.

The Village of Hinsdale, Illinois submitted comments suggesting that the rule be revised to provide credit for communities that have installed SSMs since October 9, 1996. However, the Chicago Department of Transportation, the Chicago Area Transportation Study and the DuPage Mayors and Managers Conference submitted comments asserting that any SSM, regardless of when it was installed, should result in quiet zone risk reduction. If a qualification ''cut-off'' date was necessary, though, in order to provide credit for some, but not all, SSMs that have already been installed, the date of November 2, 1994 would be appropriate. After considering these comments, FRA decided to provide risk reduction credit for pre-existing SSMs regardless of the date on which the SSM was installed, so that all communities that installed have SSMs can obtain risk reduction credit for having done so.

The final rule does not, however, provide credit for pre-existing permanent grade crossing closures or pre-existing grade separations because the risk level that existed at the original public grade crossing before it was permanently closed or grade-separated cannot be determined. Public authorities should not be adversely affected by this exception, though, because the risk indices for public grade crossings that have been permanently closed or grade separated are not included in the calculation of the Quiet Zone Risk Index.

Paragraph (b) has also been revised in the final rule to provide credit for pre-existing modified SSMs, in the manner specified by appendix B. The Chicago Department of Transportation submitted comments asserting that any ASM, regardless of when it was installed, should result in quiet zone risk reduction credit. However, if a ''cutoff'' date must be chosen, the date on which Public Law 103–440 was adopted (November 2, 1994) would be appropriate. After considering these comments, FRA revised the rule to provide risk reduction credit for pre-existing modified SSMs, regardless of the date on which the modified SSM was installed. FRA has not, however, extended risk reduction credit for pre-existing non-engineering ASMs or engineering ASMs because the initial risk level that existed at public grade crossings when the non-engineering ASM or engineering ASM was implemented cannot be determined.

Paragraph (c) has not been revised in the final rule.

Section 222.55 How Are New Supplementary or Alternative Safety Measures Approved?

This section has not been revised in the final rule.

Section 222.57 Can Parties Seek Review of the Associate Administrator's Actions?

This section details the right of parties to seek review of the Associate Administrator's actions.

Paragraph (a) of this section has been revised to provide a list of the parties that shall receive a copy of the petition for review of the Associate Administrator's decision to grant or deny an application of approval of a new SSM or ASM.

Paragraph (b) provides a process by which a public authority may request reconsideration of a decision of the Associate Administrator to deny an application for approval of a quiet zone or to require additional safety measures as a condition of approval. Under the terms of this paragraph, the public authority may file a petition for reconsideration within 60 days of the date of the Associate Administrator's decision. The petition, which must be served upon all parties listed in § 222.39(b)(3), must specify the grounds for asserting that the proposed SSMs and ASMs would not result in a Quiet Zone Risk Index that would be at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold. Upon receipt of a timely and proper petition, the Associate Administrator will give the public authority an opportunity to submit additional documents and to request an informal hearing. After reviewing the additional materials and completing any hearing requested, the Associate Administrator shall issue a decision on the petition that will be administratively final.

Paragraph (c) provides a process by which a public authority may request reconsideration of a decision of the Associate Administrator to terminate quiet zone status. This process has, however, been revised in the final rule, as filing a petition under this paragraph will no longer stay the termination of quiet zone status, unless the Associate Administrator publishes a notice in the **Federal Register** that specifically stays the effectiveness of his/her decision to terminate quiet zone status. Under the terms of this paragraph, a public authority may file a petition for reconsideration within 60 days of the date of the Associate Administrator's decision. The petition must specify the grounds for the requested relief and be served upon all parties listed in § 222.51(c)(2). Upon receipt of a timely and proper petition, the Associate Administrator will give the public authority an opportunity to submit additional documents and to request an informal hearing. After reviewing the additional materials and completing any hearing requested, the Associate Administrator shall issue a decision on the petition that will be administratively final. A copy of this decision will be served on each party listed in § 222.51(c)(2).

Paragraph (d) has been added to the final rule in response to comments submitted by the Association of American Railroads requesting a formal right to appeal FRA approvals of proposed quiet zones when a railroad believes that public safety will be adversely affected by the quiet zone. After considering these comments, FRA revised the final rule to provide a process by which a railroad may request reconsideration of a decision of the Associate Administrator to approve a quiet zone application under § 222.39(b). Under the terms of this paragraph, a railroad may file a petition for reconsideration within 60 days of the Associate Administrator's decision to approve a quiet zone application. The petition, which must be served upon all parties listed in § 222.39(b)(3), must specify the grounds for asserting that the proposed SSMs and ASMs would result in a Quiet Zone Risk Index that would be at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold. Upon receipt of a timely and proper petition, the Associate Administrator will give the railroad an opportunity to submit additional materials and to request an informal hearing. After reviewing any additional materials and completing any hearing requested, the Associate Administrator shall issue a decision which shall be administratively final.

Section 222.59 When May a Wayside Horn Be Used?

This section addresses the requirements pertaining to wayside horn installations at grade crossings.

Paragraph (a) of this section has not been revised in the final rule. The Chicago Area Transportation Study submitted comments recommending that the rule be revised to provide risk reduction credit for wayside horn installations within quiet zones. Since wayside horns have an effect that is similar to the locomotive horn, the Chicago Area Transportation Study recommended that an effectiveness rate of 66.8 percent be assigned to wayside horns. FRA has not, however, revised the rule by assigning an effectiveness rate to the wayside horn. A study performed by the Texas Transportation Institute in May 2000, which compared driver violation rates at a grade crossing equipped with a wayside horn, found that the wayside horn was as effective as the locomotive horn. However, after almost five years, use of the wayside horn did not result in a significant reduction in driver violation rates, when compared to the pre-test, baseline driver violation rate. FRA notes that the safety measures that have been approved for use as SSMs and have been assigned effectiveness rates, when implemented, have a demonstrated effect on reducing crossing collision risk. Since the wayside horn has not demonstrated a significant effect on driver violation rates, the final rule will continue to treat wayside horns as a one-to-one substitute for the locomotive horn.

Paragraph (b) of this section has been revised in the final rule to provide a specific list of parties who shall receive a copy of the notice of wayside horn installation. This paragraph has also been revised to require that the notice of wayside horn installation state the date on which the wayside horn will become operational, which shall be at least 21 days after the notice of wayside horn installation is mailed.

Paragraph (c) has been modified in the final rule to allow a railroad or public authority to provide written notification of wayside horn installations at grade crossings that are located outside a quiet zone. Under the interim final rule, the public authority was the only party authorized to provide this notification. FRA decided to extend this authorization in the final rule to include railroads, in order to provide greater flexibility.

This paragraph has also been revised in the final rule to require the railroad or public authority to provide written notification of wayside horn installation to all railroads operating over the public highway-rail grade crossing, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossing, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. Under the interim final rule, the public authority was required to provide written notification to the Associate Administrator and each railroad operating over the grade crossing. FRA has expanded this list of notified parties to ensure that all affected parties are notified of wayside horn installations outside quiet zones.

Paragraph (d) retains the interim final rule requirement that a railroad

operating over a grade crossing equipped with an operational wayside horn installed within a quiet zone pursuant to this section shall cease routine locomotive horn use at the grade crossing. This paragraph has, however, been revised in the final rule, with respect to its treatment of grade crossings that are equipped with wayside horns, but located outside of a quiet zone. Under the interim final rule, railroads could cease routine locomotive horn use at these grade crossings through agreement with the public authority. This paragraph has, however, been revised in the final rule to require railroads to cease routine locomotive horn use on the operational date specified in the notice of wayside horn installation, which shall be provided pursuant to paragraph (c) of this section.

Appendix A—Supplementary Safety Measures

Appendix A provides a list of SSMs that have been determined by FRA to effectively compensate for the lack of the locomotive horn. This list of approved SSMs has been expanded to include permanent closures of public highway-rail grade crossings, as discussed herein. However, barrier gates have not been added to the list of approved SSMs. FRA received comments from Universal Safety Response, Inc. recommending that the rule be revised to allow ''smart'' barriers, such as the GRAB-sp (Ground Retractable Automobile Barrier), to qualify as approved SSMs. FRA notes that barrier gates are currently treated as Gates with Medians for purposes of quiet zone risk reduction credit. However, public authorities who are interested in obtaining a higher effectiveness rate for a proposed barrier gate system may submit supporting documentation to the Associate Administrator for consideration.

FRA also received a number of comments from individuals and organizations, who submitted comments recommending that the rule be revised to include extended gate arms which completely block the intersection in the list of approved SSMs as a cost-effective substitute for 4-quadrant gate systems. Terence Daugherty, Village Council President in Russia, Ohio, submitted comments expressing disappointment that gates which completely block the intersection on the ingress side have not been included in the final rule. The Rice Lake Homeowners Association in Chesterton, Indiana, submitted comments asserting that extended gate arms should be considered by FRA as a cost-effective option for quiet zone risk reduction credit. The Village of Silver Lake, Wisconsin submitted comments recommending that extended gate arms be tested and approved by FRA as SSMs because they effectively prevent motorists from driving around lowered gates and they cost considerably less than 4-quadrant gates. Laurie and Greg Teran, residents of Acton, Massachusetts, submitted comments urging FRA to accommodate local solutions for high grade crossing risk by allowing safety gates with ¾-length arms to be used as Alternative Safety Measures. On the other hand, the North Carolina Department of Transportation submitted comments asserting that the use of articulated and longer gate arms should not be permitted as an SSM, in light of studies that have demonstrated decreased effectiveness from the use of these devices.

After considering these comments, FRA did not revise the rule by adding elongated gate arms to the list of approved SSMs because of the lack of demonstrated effectiveness of these devices. However, public authorities who wish to add elongated gate arms to the list of approved SSMs are encouraged to follow the procedures set forth in § 222.55 for obtaining FRA approval to demonstrate the effectiveness of these traffic control measures.

Appendix A has also been revised in the final rule to set forth the procedures by which public authorities can receive credit for certain pre-existing SSMs. (For a discussion of the comments received on this issue, please refer to the preamble discussion of § 222.53.) An explanatory note has also been added at the beginning of this appendix, which states that the SSM effectiveness rates are subject to adjustment as research and demonstration projects are completed and data is gathered and refined. This explanatory note, which was derived from language in the preamble to the interim final rule, has been added to the final rule text to make it clear that the effectiveness rates of the SSMs listed in appendix A are subject to change. FRA received comments on this issue from the Metropolitan Transit Authority and the New York Department of Transportation suggesting that the interim final rule be revised to include a periodic review of SSM effectiveness rates. FRA intends to revise the SSM effectiveness rates in the future, as more data on SSM effectiveness rates becomes available through research and demonstration projects, as well as real-world experience with SSM implementation inside quiet zones. However, formal periodic reviews of SSM effectiveness rates have not been added to the final rule.

Temporary Closure of a Public Highway-Rail Grade Crossing

The requirements pertaining to this SSM have been modified in the final rule. Requirement ''a'' has been modified to state that the closure system must completely block highway traffic on all approach lanes to the crossing. This modification was made in response to comments received from the Ohio Rail Development Commission suggesting that the rule be revised to make it clear that closure devices should be provided for each approach to the crossing, including one-way streets. Requirement ''b'', which has been added to the final rule, pertains to adjacent pedestrian crossings. FRA received comments from the AAR and the Ohio Rail Development Commission recommending that the final rule be revised to require closure of pedestrian crossings and adjacent sidewalks whenever the highway-rail grade crossing is temporarily closed. After considering these comments, FRA added requirement ''b'' to the final rule, which requires that the closure system completely block adjacent pedestrian crossings. Requirement ''c'' has also been revised in the final rule by requiring a specified crossing closure period (10 p.m. until 7 a.m.) within New Partial Quiet Zones. This revision has been made in response to comments submitted by the AAR, which urged FRA to establish uniform closure periods for temporary crossing closures in order to minimize locomotive engineer confusion.

Requirements ''d'' through ''f'' have not been revised in the final rule. However, requirement ''g'', which requires that the closure system be equipped with a monitoring device that contains an indicator that is visible to the train crew prior to entering the crossing, has been added to the final rule. The Ohio Rail Development Commission and the North Carolina Department of Transportation submitted comments recommending that the rule be revised to require that temporary closure systems be equipped with monitoring/indicator devices that illuminate and are visible to the train crew whenever the quiet zone is in effect and the closure system has been deployed. After considering these comments and the positive effect that the monitoring/indicator device would have on crossing safety, FRA revised the final rule accordingly.

Four-Quadrant Gate System

This section has not been revised in the final rule.

FRA received comments on the effectiveness rates assigned to four-quadrant gate systems in the interim final rule. The Ohio Rail Development Commission submitted comments asserting that the lower effectiveness rate assigned to 4-quadrant gate systems with vehicle presence detection acts as a disincentive against their use, even though vehicle presence detection can be critical to the safe operation of the 4-quadrant gate system. Railroad Controls Limited submitted similar comments requesting that FRA reconsider its position on this issue and acknowledge that 4-quadrant gate systems that incorporate vehicle presence detection provide a greater degree of safety to roadway users. After considering these comments, FRA did not revise the effectiveness rates assigned to four-quadrant systems equipped with vehicle presence detection because the vehicle presence detection system provides a potential opportunity for motorists to circumvent the grade crossing warning system. However, FRA notes that the rule assigns a higher effectiveness rate (.92) to four-quadrant gate systems equipped with vehicle presence detection, if traffic channelization devices at least 60 feet in length are also installed at the crossing. FRA also notes that more extensive use of 4-quadrant gates, which has begun to take place only over the past several years, will provide additional data that may permit an adjustment in the effectiveness rate within a reasonably short period.

Gates With Medians or Channelization Devices

The definition of channelization devices has been revised in the final rule to exclude surface-mounted tubular delineators, in response to comments expressing concern with the effectiveness of these devices. In particular, FRA notes that the North Carolina Department of Transportation submitted comments recommending that the rule prohibit the use of tube-type delineators that adhere directly to the roadway surface as approved channelization devices. These comments were especially troubling because FRA relied upon the positive results of a traffic study conducted in Charlotte, North Carolina when it allowed surface-mounted traffic delineators to be used as approved SSMs under the interim final rule.

FRA also received negative comments on the use of surface-mounted tubular delineators from Richard Calvin, Maintenance Manager for the City of Malibu, California, which had installed these devices on the Pacific Coast Highway to discourage drivers from making left turns at inappropriate locations. Mr. Calvin asserted that motorists drove over the surface-mounted tubular delineators at such a high rate that the majority of the devices had to be replaced annually. Once the surface-mounted tubular delineators were removed and replaced with medians equipped with wide vertical markers, there was a dramatic reduction in associated maintenance costs.

The increased maintenance responsibility associated with surface-mounted tubular delineators was also discussed in comments from the Ohio Rail Development Commission, which asserted that traffic lane delineators should not be allowed as channelization devices because they are easy to drive through and can be easily broken. Richard Doll, Sr., Signal Systems Engineer for the Town of Greenwich, Connecticut, submitted comments suggesting that FRA revert back to the language within the NPRM, which only allowed the use of mountable curbs as approved channelization devices.

After considering these comments, FRA decided to revise the definition of channelization devices to exclude surface-mounted tubular delineators, given the maintenance responsibility associated with these devices and the impact that inadequate maintenance would have on the effectiveness of these devices. FRA decided to adopt an approach similar to that recommended by the North Carolina Department of Transportation of requiring permanent raised longitudinal channelizers as a component of approved median SSMs. FRA notes that it would be highly advisable to use raised longitudinal channelizers that are at least four inches high. Thus, under the final rule, vertical panels and tubular delineators can only be used as approved SSMs, if they are affixed to raised longitudinal channelizers or non-traversable curbs.

The requirements pertaining to this SSM have not been substantially revised in the final rule. However, edits have been made to requirement ''e'' in order to correct a typographical error and provide further clarification on when constant warning time devices must be installed. The final rule states that constant warning time devices are required when existing warning systems are renewed or when new automatic warning systems are installed, unless conditions at the crossing would prevent the proper operation of these devices.

FRA received comments on requirements ''b'' and ''c''. The Florida Department of Transportation submitted comments reiterating its position that 100-foot medians may not provide a sufficient deterrent effect. In support of this position, the Florida Department of Transportation asserted that 200-foot medians are more effective on heavily traveled, multi-lane urban roadways. Therefore, the Florida Department of Transportation recommended that traffic volume and the number of roadway lanes be evaluated when determining desirable median length. As stated in the Interim Final Rule, FRA agrees that use of 200-foot medians will often be recommended when practicable. However, FRA is merely prescribing a minimum 100-foot median length requirement. Public authorities may choose to install longer medians at their discretion.

With respect to requirement ''c'', FRA received comments from the City of Orange, California recommending that the rule be revised to allow commercial driveways within 60 feet of the crossing gate arm, provided they are equipped with directional signs and positive barricades (*i.e.*, ''Pork Chop'' medians). The City of Orange, California also asserted that low-volume commercial driveways should not be considered to be intersections for purposes of this rule. However, given the unique characteristics of each highway-rail grade crossing, FRA would prefer to review public authority applications for the use of these modified SSMs on a crossing-by-crossing basis. Therefore, requirement c has not been revised in the final rule.

One Way Street With Gate(s)

Only minor revisions have been made to the list of requirements for this SSM. Requirements ''a'' through ''c'' have not been revised in the final rule. However, requirement ''d'' has been revised to include Pre-Rule Partial Quiet Zones. Requirement ''d'' has also been revised to provide clarification of the circumstances under which the installation of constant warning time devices and power-out indicators would be required.

Permanent Closure of a Public Highway-Rail Grade Crossing

FRA has added permanent grade crossing closures to the list of approved SSMs in appendix A. Under the interim final rule, public authorities could receive credit for permanently closing a public grade crossing by including the crossing to be closed in the calculation of the Risk Index With Horns. However, the public authority could not include

the crossing in the calculation of the Quiet Zone Risk Index. As a result, the public authority could benefit from an increased Risk Index With Horns, but could not directly reduce the Quiet Zone Risk Index by permanently closing a public crossing.

FRA received comments on this issue from the DuPage Mayors and Managers Conference, the Chicago Department of Transportation, and the Chicago Area Transportation Study requesting that FRA reconsider this issue and allow public authorities to include a crossing to be closed in the calculation of the Quiet Zone Risk Index. After considering these comments and taking note of the fact that the interim final rule assigned an effectiveness rate of one to temporary crossing closures, FRA decided to include permanent grade crossing closures in the list of approved SSMs and to assign an effectiveness rate of one to this new SSM. However, the public authority must remember to adjust upward the traffic counts of adjacent crossings, in order to reflect the diversion of traffic from the newly closed crossing.

Credit for Pre-Existing SSMs

Sections B and C of this appendix have been added to the final rule to address quiet zone risk reduction credit for pre-existing SSMs. The procedures set forth in these sections provide quiet zone risk reduction credit by inflating the Risk Index With Horns. This reflects an assumption that the Risk Index With Horns would have been higher if the pre-existing SSMs were never implemented. As discussed in the preamble discussion of § 222.53, FRA decided to provide credit for pre-existing SSMs after receiving comments on this issue from individuals and organizations in the Chicago Region.

Section B sets forth the procedure by which a community seeking to create a New Quiet Zone or New Partial Quiet Zone can receive quiet zone risk reduction credit for pre-existing SSMs located within the proposed quiet zone. (It should, however, be noted that a public authority cannot receive credit for pre-existing permanent crossing closures or pre-existing grade separations.) Under this section, a public authority is instructed to calculate the current risk index for the grade crossing that is equipped with a pre-existing SSM. This current risk index will then be increased by dividing the index by one minus the SSM effectiveness rate, in order to calculate what the risk index for the grade crossing would have been if the SSM had never been implemented. This new risk index is then averaged with the current risk indices for the other grade crossings within the proposed quiet zone, in order to calculate the new Risk Index With Horns for the proposed quiet zone. A public authority can then choose to establish a New Quiet Zone or New Partial Quiet Zone in comparison to either the new Risk Index With Horns or the Nationwide Significant Risk Threshold.

Section C sets forth the procedure by which a community seeking to continue a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone can receive quiet zone risk reduction credit for pre-existing SSMs located within the quiet zone. (Again, it should be noted that a public authority cannot receive credit for pre-existing permanent crossing closures or grade separations.) The public authority should first calculate the current risk index for the grade crossing that is equipped with a pre-existing SSM. This current risk index should then be reduced to reflect the risk reduction that could have been achieved if locomotive horns had been routinely sounded at the crossing. Based on FRA analysis of the effect of the locomotive horn on various crossing types, the following risk reduction percentages shall be applied: (a) Risk indices for passive crossings shall be reduced by 43%; (b) Risk indices for grade crossings equipped with automatic flashing lights shall be reduced by 27%; and (c) Risk indices for gated crossings shall be reduced by 40%.

This reduced risk index should then be increased by dividing it by one minus the SSM effectiveness rate, in order to calculate what the risk index would have been if locomotive horns routinely sounded, but no SSM had ever been implemented, at the grade crossing.

Since locomotive horns have been silenced at the other grade crossings within the quiet zone, the public authority will also have to reduce the current risk indices for the other grade crossings to reflect the risk reduction that could have been achieved if locomotive horns had been routinely sounded at those grade crossings. Please refer to step two for the list of approved risk reduction percentages by crossing type.

These new reduced risk indices should then be averaged with the new risk index for the grade crossing equipped with a pre-existing SSM, in order to calculate the new Risk Index With Horns for the quiet zone. A public authority can then choose to establish the quiet zone in comparison to the new Risk Index With Horns or the Nationwide Significant Risk Threshold.

Appendix B—Alternative Safety Measures

Appendix B addresses three types of ASMs: modified SSMs, non-engineering ASMs, and engineering ASMs. Modified SSMs are SSMs that do not fully comply with the provisions listed in appendix A. As provided in section I.B. of this appendix, public authorities can obtain risk reduction credit for pre-existing modified SSMs under the final rule. Non-engineering ASMs are programmed enforcement, public education and awareness, and photo enforcement that may be used to reduce risk in the creation of a quiet zone. Engineering ASMs are engineering improvements, other than modified SSMs, that reduce risk at highway-rail grade crossings. Examples of engineering ASMs include engineering improvements to geometric conditions and sight lines at the crossing.

Modified SSMs

Section I.A. of this appendix, which contains a discussion of modified SSMs and the process by which modified SSM effectiveness rates can be determined, has not been revised in the final rule. However, sections I.B. and I.C. of this appendix have been added to the final rule to address quiet zone risk reduction credit for pre-existing modified SSMs. The procedures set forth in these sections provide quiet zone risk reduction credit by inflating the Risk Index With Horns. This reflects an assumption that the Risk Index With Horns would have been higher if the pre-existing modified SSMs were never implemented. As discussed in the preamble discussion of § 222.53, FRA decided to provide credit for pre-existing modified SSMs after receiving comments on this issue from the Chicago Department of Transportation.

Section I.B. sets forth the procedure by which a community seeking to create a New Quiet Zone or New Partial Quiet Zone can receive quiet zone risk reduction credit for pre-existing modified SSMs located within the proposed quiet zone. Under this section, a public authority is instructed to calculate the current risk index for the grade crossing that is equipped with a pre-existing modified SSM. Once the public authority obtains FRA approval of the estimated effectiveness rate for the pre-existing modified SSM, the current risk index for the crossing should be increased by dividing the index by one minus the FRA-approved estimated effectiveness rate for the pre-existing modified SSM, in order to calculate what the risk index for the grade crossing would have been if the

pre-existing modified SSM had never been implemented. This new risk index is then averaged with the current risk indices for the other grade crossings within the proposed quiet zone, in order to calculate the new Risk Index With Horns for the proposed quiet zone. A public authority can then choose to establish a New Quiet Zone or New Partial Quiet Zone in comparison to either the new Risk Index With Horns or the Nationwide Significant Risk Threshold.

Section I.C. sets forth the procedure by which a community seeking to continue a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone can receive quiet zone risk reduction credit for pre-existing modified SSMs located within the quiet zone. The public authority should first calculate the current risk index for the grade crossing that is equipped with a pre-existing SSM. This current risk index should then be reduced to reflect the risk reduction that could have been achieved if locomotive horns had been routinely sounded at the crossing. Based on FRA analysis of the effect of the locomotive horn on various crossing types, the following risk reduction percentages shall be applied: (a) Risk indices for passive crossings shall be reduced by 43%; (b) Risk indices for grade crossings equipped with automatic flashing lights shall be reduced by 27%; and (c) Risk indices for gated crossings shall be reduced by 40%.

Once the public authority obtains FRA approval of the estimated effectiveness rate for the pre-existing modified SSM, the reduced risk index for the crossing should be increased by dividing it by one minus the FRA-approved estimated modified SSM effectiveness rate. This will calculate what the risk index would have been if locomotive horns routinely sounded, but no modified SSM had ever been implemented, at the grade crossing.

Since locomotive horns have been silenced at the other grade crossings within the quiet zone, the public authority will also have to reduce the current risk indices for the other grade crossings to reflect the risk reduction that could have been achieved if locomotive horns had been routinely sounded at those grade crossings. Please refer to step two for the list of approved risk reduction percentages by crossing type.

These new reduced risk indices should then be averaged with the new risk index for the grade crossing equipped with a pre-existing modified SSM, in order to calculate the new Risk Index With Horns for the quiet zone. A public authority can then choose to establish the quiet zone in comparison to the new Risk Index With Horns or the Nationwide Significant Risk Threshold.

Non-Engineering ASMs

The final rule adds a new recordkeeping requirement for all non-engineering ASMs. FRA received comments on the interim final rule which expressed concern that non-engineering ASMs are not effective substitutes for the routine use of the locomotive horn. The North Carolina Department of Transportation submitted comments asserting that enforcement programs require constant application and significant resource allocation to generate significant safety benefits. The Metropolitan Transit Authority submitted similar comments and expressed concern that, over time, resources may be allocated to other issues, resulting in inconsistent enforcement at crossings. In response to these comments, FRA revised the final rule to require the public authority to retain all records pertaining to monitoring or sampling efforts at grade crossings within quiet zones, which are subject to non-engineering ASMs, for a period of not less than five years. These records shall also be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

FRA received comments from the City of Elmhurst, Illinois recommending that the rule be revised to provide credit for past education and enforcement initiatives. Noting that it has worked on education and enforcement initiatives for over a decade, the City of Elmhurst, Illinois asserted it would be penalized under the approach taken in the interim final rule because it would be very difficult to further reduce the violation rate. FRA has not, however, revised the rule to provide credit for prior non-engineering initiatives because it would be nearly impossible to determine the baseline violation rate that existed before the non-engineering measures were undertaken.

The discussion of Public Education and Awareness programs has also been revised to correct a typographical error in requirement ''b''.

Engineering ASMs

The final rule adds a new category of ASMs to appendix B. This category consists of engineering improvements that fall outside the scope of modified SSMs. Examples of engineering ASMs include improvements to the geometric conditions and/or sight lines at the grade crossing.

This new category of ASMs has been added to the final rule in response to comments requesting greater flexibility in the range of improvements that could qualify for SSM or ASM status. Noting that the interim final rule contained a limited range of safety measures that could be applied to a grade crossing for quiet zone risk reduction credit, the Northwest Municipal Conference submitted comments suggesting that the rule be revised to provide credit for improvements that address underlying geometric conditions that are a source of risk at grade crossings. The Village of Andover, Massachusetts submitted comments that strongly encouraged FRA to allow communities to qualify for quiet zone status on the basis of cost effective safety measures that are tailored to the risks and circumstances of each individual grade crossing. The City of Cumberland, Maryland submitted comments noting that there are a myriad of improvements that could ''substitute for the sounding of a train horn'', such as sight distance and geometric improvements, Intelligent Transportation Systems, and operational improvements. Noting that the interim final rule did not provide credit for relatively obvious safety improvements such as geometric changes and improvements to sight lines, the Chicago Area Transportation Study submitted comments recommending that the final rule provide credit for the on-site review of safety problems and the professional use of engineering judgment to address actual safety problems. In response to these comments, FRA added a new category to appendix B to make it clear that engineering improvements such as those which address underlying geometric conditions can qualify for quiet zone risk reduction credit as ASMs. However, if the Engineering ASM consists of vegetation clearance to improve sight lines, the quiet zone application should include a plan for periodic vegetation clearing that will ensure the continuation of unobstructed sight lines at the crossing.

Public authorities can determine the effectiveness of an Engineering ASM as follows:

1. The first step in assessing the effectiveness of an Engineering ASM is to establish the quarterly (3 months) baseline violation rate for the crossing at which the Engineering ASM will be applied. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered.

Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (*e.g.* inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating. In the event that data is not collected continuously during the quarter, sufficient detail must be provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: sampling on certain days of the week but not others, sampling during certain times of the day but not others, sampling immediately after implementation of an ASM while the public is still going through an adjustment period, or applying one sample method for the baseline rate and another for the new rate. One possible approach to avoid sampling bias would be to break a three-month observation period into many time slots and then randomly selecting these slots for sampling. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods. The application should include enough detail on the method used to collect and assess the data to ensure that the results will provide a statistically valid result. While it is not mandatory, public authorities are encouraged to provide FRA with its sampling methodology for comment prior to actually collecting the data. This will enable FRA to provide comments to ensure that the sampling methodology is adequate.

2. The Engineering ASM should be initiated at the crossing. During this time period, the sounding of train horns will continue. Train horns will not be silenced until the quiet zone application has been formally approved by FRA.

3. In the calendar quarter following initiation, a new violation rate should be determined (using the same methodology as in paragraph a) and compared to the baseline violation rate for the crossing. The violation rate reduction for the crossing should then be determined by the following formula:

Violation rate reduction = (new rate − baseline rate)/baseline rate

Example. The baseline rate for a crossing was 60 violations per 100 gate activations. After implementation of the Engineering ASM, the new violation rate for the next quarter was 20 violations per 100 gate activations. The violation rate reduction would be 66% (.66).

4. Using the Engineering ASM effectiveness rate, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed quiet zone has been reduced to a risk level at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the quiet zone. Upon receiving written approval of the quiet zone application, the public authority may then proceed with notification and implementation of the quiet zone.

5. Violation rates must be monitored for the next two calendar quarters. Unless otherwise provided in FRA's notification of quiet zone approval, if the violation rate for these two calendar quarters does not exceed the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may cease violation rate monitoring.

Example. Continuing with the above example, the monitoring during the two calendar quarters following implementation of the quiet zone showed that the violation rate never exceeded 20 violations per 100 gate activations. Since the notification of quiet zone approval did not include any conditions requiring additional violation rate monitoring, the public authority may cease violation report monitoring.

6. In the event that the violation rate over either of the next two calendar quarters is greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for a third calendar quarter. However, if the third calendar quarter violation rate is also greater than the rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index exceeds the Risk Index With Horns or the Nationwide Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

Appendix C—Guide To Establishing Quiet Zones

This appendix has been revised to incorporate changes made to the rule text and to reflect the current Nationwide Significant Risk Threshold value.

Appendix D—Determining Risk Levels

This appendix has been revised to reflect the revised data set used to calculate the current Nationwide Significant Risk Threshold.

Appendix E—Requirements for Wayside Horns

Appendix E sets forth the minimum requirements for wayside horn use at highway-rail grade crossings. One such requirement, the minimum required sound level, has been revised in the final rule.

The interim final rule established a minimum required sound level of 96 dB(A), when measured 100 feet from the wayside horn in the direction in which it has been installed. However, the Village of Mundelein, Illinois submitted comments asserting that a wayside horn sound level of 92 dB(A) matches the sound level produced by a locomotive horn that has been set to 111 dB(A). Since the interim final rule established a maximum sound level of 110 dB(A) for locomotive horns, the Village of Mundelein argued that the minimum sound level for wayside horns should be reduced from 96 dB(A) to 92 dB(A), as measured 100 feet from the track. The City of Roseville, California, which has a wayside horn that has been set to 92 dB(A), submitted similar comments asserting that an increase of 4 dB(A) (to meet the minimum sound level required by the interim final rule) would negate much of the noise reduction benefits that are currently enjoyed by its residents. Noting that all existing wayside horn installations in Illinois, Iowa, Nebraska, and Kansas, are set at 92 dB(A), as measured 100 feet from the crossing, Hanson Wilson Incorporated submitted comments asserting that the interim final rule required wayside horns to provide a louder alarm on roadway approaches than the locomotive horn.

Railroad Controls Limited submitted comments asserting that the sound level of wayside horns should be measured from a location 100 feet from the crossing, as opposed to a location 100 feet from the wayside horn. Noting that all studies completed to date have established wayside horn sound levels in reference to the track, as opposed to the horn location, Railroad Controls Limited asserted that grade crossings at severely skewed crossing angles could create situations in which the wayside horn must be installed 50 feet or greater from the centerline of the track. This could result in wayside horn sound level measurements being taken from a

location 150 feet or greater from the track. In the alternative, sound level measurements taken 100 feet from the track would provide a more accurate measurement of the audible warning provided to motorists approaching the crossing.

After reviewing its previous analysis of the alerting power of a wayside horn, FRA determined that a wayside horn set to 92 dB(A) would provide a comparable audible warning. Therefore, FRA revised the final rule by reducing the minimum required sound level for wayside horns to 92 dB(A). In addition, FRA revised the final rule to require that wayside horn sound level measurements be taken from a location 100 feet from the centerline of the nearest track.

Appendix F—Diagnostic Team Considerations

Appendix F contains lists of issues that should be considered during diagnostic team reviews of grade crossings that have been proposed for inclusion within a quiet zone. In the interim final rule, this appendix contained a list of issues that should be considered when reviewing any highway-rail grade crossing that is proposed for inclusion within a quiet zone, as well as a list of issues that should be considered during diagnostic team reviews of private crossings in accordance with § 222.25. A third list of issues has been added in the final rule, which addresses diagnostic team reviews of pedestrian crossings required by § 222.27.

A minor revision has also been made to this appendix, in order to clarify that engineering personnel from the State agency responsible for grade crossing safety should also be invited to participate in diagnostic team reviews of grade crossings proposed for inclusion within a quiet zone.

Appendix G—Schedule of Civil Penalties

Appendix G contains the list of civil penalties that can be assessed for specific violations of Part 222. The list of civil penalties has been modified to state that routine sounding of the locomotive horn more than ¼-mile in advance of public highway-rail grade crossings and at highway-rail grade crossings located within quiet zones could subject the operating railroad to standard civil penalties of $5,000 and willful civil penalties of $7,500. A minor modification has also been made to this list in the final rule to correct a typographical error. Routine sounding of the locomotive horn at a grade crossing equipped with a wayside horn, which could subject a railroad to standard penalties of $5,000 and willful penalties of $7,500, is now listed as a violation of § 222.59(d). Lastly, the footnote to this appendix has been revised to reflect the increased maximum civil penalty ($27,000) which can be assessed by FRA when a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury or has actually caused death or injury.

Section 229.129 Audible Warning Device

Paragraph (a) of this section requires that each lead locomotive be equipped with an audible warning device that produces a minimum sound level of 96 dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The device shall be conveniently operated from the engineer's usual position during operation of the locomotive.

FRA received a number of comments asserting that the maximum sound level of 110 dB(A) was too high. City Councilman James Moore, representing Northwood, Ohio, submitted comments noting that OSHA has deemed noise levels above 80 dB(A) to be hazardous to your hearing. Margaret Petitjean, a commenter from Menlo Park, California, noted that the Environmental Protection Agency has compiled scientific information about the effects of noise exposure and defined 60 dB(A) as an acceptable sound level for residential noise exposure. The City of Rocky River, Ohio suggested that the maximum sound level be reduced to 65 dB(A), which would be consistent with the noise exposure experienced by communities around airports. At a February 2004 meeting in Western Springs, Illinois, Alderman Ginger Rugai, who represents Chicago's 19th Ward, suggested that 85 dB(A) be adopted as the maximum sound level for locomotive horns.

On the other hand, FRA received comments from the railroad industry stating that the maximum sound level of 110 dB(A) was too low. The Florida East Coast Railway asserted that a maximum sound level of 111 dB(A), which was originally proposed in the NPRM, should be reinstated. The Association of American Railroads submitted similar comments urging FRA to adopt a maximum sound level of 111 dB(A). Asserting that no explanation was provided in the interim final rule for the selection of the 110 dB(A) maximum sound level, the Association of American Railroads asserted that FRA appears to have acted in a somewhat arbitrary manner when making this selection. If the maximum sound level was increased to 111 dB(A), the Association of American Railroads asserted that five-chime locomotive horns located in the mid-body section of the locomotive could be expected to meet this requirement without modification, which could have a significant impact on the regulatory burdens associated with this rule.

After considering these comments and reviewing its rationale for the 110 dB(A) maximum sound level requirement, FRA decided to retain the 110 dB(A) maximum sound level requirement. FRA's analysis indicates that there is a 95% likelihood that a locomotive horn set to 108 dB(A) will be detected by motorists approaching a grade crossing. Therefore, FRA considers 108 dB(A) to be the optimal sound level for the locomotive horn. FRA added a 2 dB(A) tolerance to the 108 dB(A) standard, in order to account for measurement uncertainty and fluctuations in horn sound level output. Given the strong concerns about potential noise exposure expressed by local communities, FRA remains unconvinced that the additional noise exposure that would result from a 111 dB(A) maximum sound level, plus or minus an additional 2 dB(A) tolerance for measurement uncertainty, is justifiable.

FRA also decided to retain the minimum horn sound level of 96 dB(A), which is already 12 dB(A) lower than the optimal locomotive horn sound level of 108 dB(A). A locomotive horn set to the optimal sound level of 108 dB(A) would have a sound level of approximately 95 dB(A) at the motorist decisionmaking point (50 feet in advance of the grade crossing). If FRA reduced the minimum sound level for locomotive horns by 4 dB, for example, the locomotive horn sound level would be drastically reduced to approximately 79 dB(A) at the motorist decision-making point. Despite the benefits in decreased noise exposure that might result from such a reduction, FRA is unwilling to reduce the minimum required sound level, given the corresponding reduction in horn effectiveness.

Paragraph (b) provides a schedule for locomotive horn testing. This schedule has been adjusted in the final rule to correspond to the final rule effective date. Locomotives built on or after June 24, 2005 must be tested and brought into compliance with this section. However, paragraph (b) of this section has been revised in response to comments which recommended that the rule be revised to allow for locomotive horn certification. The AAR submitted comments which noted that, if a

certification process were used, only a limited number of tests would be necessary under the rule. GM Electro Motive Division submitted comments recommending that the rule allow the locomotive horn manufacturer to certify the horn sound level output, while the locomotive manufacturer would certify that proper air supply is being provided to the horn mounting interface. On the other hand, General Electric submitted comments recommending a combination of type testing of the horn on the locomotive and laboratory testing for each horn produced. A type locomotive for the purpose of this rule would be defined as all locomotives utilizing the same horn model, configuration, and location, the same air pressure and delivery system, and the same locomotive roof configuration including the location of other roof mounted apparatus and devices. Once a specific type of locomotive has been successfully tested to show compliance, on-going validation would be limited to quantified testing of the horn sound level in a laboratory, preferably at the horn supplier's factory, and a non-quantified functional test of the horn on the locomotive prior to shipment.

After considering these comments, FRA has revised paragraph (b)(1) to allow type testing of new locomotives through a method similar to that which was proposed by General Electric. Under paragraph (b)(1), railroads and locomotive manufacturers will be allowed to use acceptance sampling to determine whether new locomotives meet the standards prescribed on this section. However, all sampling shall be performed on locomotive horns that have already been installed on the locomotive. Thus, acceptance sampling of locomotive horns prior to installation is not permitted under this section.

Paragraph (b)(1) requires that the acceptance sampling scheme used by the railroad must have a probability of .05 or less of rejecting a lot with a proportion of defectives equal to an AQL of 1% or less, as set forth in 7 CFR part 43.

Locomotives built before June 24, 2005 cannot be type tested to ensure compliance, but an additional year has been provided for the testing of these locomotives under the final rule. Even though the City of Fresno, California submitted comments urging FRA to advance the compliance date for existing locomotives to December 31, 2006, FRA decided to provide an additional year for the testing of existing locomotives to alleviate concerns expressed by the Association of American Railroads that the testing requirements set forth in the interim final rule for existing locomotives were burdensome. Therefore, locomotives built before June 24, 2005 must be tested and brought into compliance with this section by June 24, 2010. However, the final rule retains the requirement that horns must be tested and brought into compliance with this section whenever a locomotive is rebuilt (as determined in accordance with 49 CFR 232.5).

Paragraph (c) specifies the testing and recordkeeping requirements and measurement procedures. This paragraph has been revised in the final rule in order to reduce any adverse impact that may have been associated with the testing requirements and measurement procedures contained within the interim final rule. However, paragraphs (c)(1) through (c)(4) have not been revised.

Paragraph (c)(5) has been revised in response to comments that the clearance restrictions contained within the interim final rule were impracticable. Asserting that many, if not most, railroads would be unable to meet the interim final rule minimum clearance requirements of 400 feet to the front of the locomotive and 200 feet to the side of the locomotive and horn, the Association of American Railroads recommended that the minimum clearance requirements be revised to allow 200 foot clearances to the front of the locomotive and 100 foot clearances to the side of the locomotive and horn. After considering these comments, FRA revised the minimum clearance requirements in the final rule to allow 200 foot clearances to the front and sides of the locomotive, even though FRA strongly recommends that 400 foot clearances to the front of the locomotive, where practicable.

FRA did not fully adopt AAR's recommendation out of concern with the increased error that may result from the introduction of large, reflective structures in close proximity to the testing microphone. Therefore, FRA adopted an approach comparable to ISO 3095 (''Measurement of noise emitted by railbound vehicles''), which calls for at least 57.7 meters (or 189 feet) clear of large reflecting objects around a stationary locomotive. Yard test facilities that are already in compliance with ISO 3095 should also be in compliance with the final rule, so this modification to the minimum clearance requirements should reduce any financial or operational burdens associated with the original clearance requirements contained within the interim final rule.

Paragraph (c)(6) has been revised to provide more flexibility in the parameters for acceptable horn testing conditions. FRA received comments from the GM Electro Motive Division, General Electric, and the AAR which asserted that the required parameters for optimal horn testing conditions would have a significant adverse impact on locomotive manufacturers. In particular, the GM Electro Motive Division asserted that the temperature and humidity requirements contained within the interim final rule would prohibit horn testing at its Ontario facility for an average of 62 days out of the year. General Electric also submitted comments asserting that it would be forced to reduce its production of new locomotives, due to the parameters imposed by interim final rule for acceptable horn testing conditions. MotivePower, a manufacturer of commuter and switcher locomotives, submitted comments asserting that the minimum temperature requirements for locomotive horn testing could be problematic, as daytime temperatures at their location may not reach 32 degrees Fahrenheit during the wintertime. Therefore, MotivePower proposed that a standard set of data be taken and kept on record for each type of locomotive and locomotive horn. This data set could then be used to calibrate horn sound level measurements taken at temperature and humidity levels outside of those levels required by paragraph (c)(6) of the rule.

FRA has attempted to alleviate the potential impact of the rule's horn testing requirements by allowing type testing for new locomotives. However, FRA made additional modifications in the final rule by expanding the parameters for acceptable horn testing conditions. The acceptable ambient temperature range has been expanded in the final rule to include temperatures between 32 and 104 degrees Fahrenheit (0 to 40 degrees Celsius) inclusively.

Paragraph (c)(7) has been revised in response to comments requesting modifications in the horn testing protocol for cab-mounted and low-mounted horns. Noting that the locomotive horn has been placed at the bottom of its locomotive fleet, the Southern California Regional Rail Authority suggested that the rule be revised by requiring the testing of higher-mounted horns at 15 feet above the rail and lower-mounted horns at four feet above the rail. In a similar vein, Caltrain submitted comments noting that its locomotive horns have been relocated to a position that is four feet above the rail. Therefore, Caltrain suggested that the rule be revised to accept horn measurements taken at points between four and fifteen feet above the rail. The Association of

American Railroads also submitted comments recommended that the rule be revised to allow testing between four and fifteen feet above the ground and within eight and fifteen feet from the center line of the track to accommodate cab-mounted horns. After reviewing these comments, FRA revised the rule to allow testing of cab-mounted and low-mounted horns from a position four feet above the rail.

Paragraph (c)(7) has also been revised in response to comments from the Association of American Railroads requesting that the rule permit testing with the microphone positioned off from the track center to facilitate the use of permanent testing equipment. If testing of locomotive horns must take place directly in front of the locomotive, the Association of American Railroads argued that railroads would be unable to use permanent testing equipment as the equipment would obstruct train movements down the track. By allowing microphone positions offset from the center of the track, however, the use of permanent testing equipment to measure sound levels would become feasible and a more realistic measurement of motorist perception could be obtained. Therefore, the Association of American Railroads recommended that the rule be revised to allow microphone placement at an angle up to 45 degrees from the center line of the track.

After considering these comments and reviewing its analysis on this issue, FRA concluded that there is a three to six dB drop in sound level when the microphone is positioned at an angle of 45 degrees from the center of the track. However, there is less than a 1.5 dB drop in sound level when the microphone is positioned at an angle of less than 30 degrees from the center of the track. Therefore, FRA revised the final rule to allow locomotive horn testing, using a microphone positioned at an angle up to 20 degrees from the center of the track, in order to facilitate the use of permanent testing equipment.

Paragraph (c)(8) has not been revised. However, paragraph (c)(9) has been revised in the final rule to allow shorter horn sounding events. Under the interim final rule, railroads were required to take at least six 20-second sound level readings after the locomotive horn reached a stable sound level in order to determine the average locomotive horn sound level. However, the Association of American Railroads submitted comments recommending that the rule be revised to reduce the duration of the sound level readings to six to ten seconds, in order to reduce unnecessary noise exposure. After considering these comments, FRA agreed that 10-second sound level measurements should be sufficient, once the locomotive horn reaches a stable sound level. Therefore, the final rule was revised to allow six 10-second sound level measurements after output from the locomotive horn system reaches a stable level.

Paragraph (c)(10) has been revised in the final rule to provide more specific recordkeeping requirements. The final rule requires railroads to record horn type, the location of horn testing, air flow and sound level measurements, in addition to the date and manner of testing. In addition, the person who performs horn testing is now required to sign the record, which shall be retained by the railroad, at a location of its choice, until a subsequent locomotive horn test is completed. The locomotive horn test record shall be made available to FRA upon request.

Paragraph (d) has not been revised. FRA received comments from NJ Transit recommending that this paragraph be revised to exclude light rail systems operating on the general railroad system pursuant to an FRA-approved Temporal Separation Plan. In the alternative, NJ Transit asserted that safety standards for audible warning sound levels on light rail operations could be adopted through the State safety oversight process. FRA has not, however, revised this paragraph to exclude all light rail operations on the general railroad system. Therefore, railroads that conduct light rail operations on the general railroad system pursuant to an FRA-approved Temporal Separation Plan must file a waiver under § 222.15 to obtain relief from the application of this provision. After reviewing the underlying circumstances, FRA may then grant relief on a case-by-case basis.

17. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This Final Rule has been evaluated in accordance with existing policies and procedures and is considered to be significant under both Executive Order 12866 and DOT policies and procedures. FRA has prepared and placed in the docket a regulatory evaluation of the rule. Following is a summary of the findings.

FRA identified 1,598 existing whistle ban or no-horn crossings that would qualify for inclusion in Pre-Rule Quiet Zones. FRA also identified 372 potential New Quiet Zone crossings and 71 potential Intermediate Quiet Zone crossings. Using information available about the crossing characteristics and the number of persons that would be or currently are severely affected by the sounding of train horns, FRA estimated the costs and benefits of the actions that communities would take in response to this rule. FRA believes that many communities will take advantage of the many options available to establish quiet zones. Some existing whistle ban crossings may not be included in quiet zones. FRA also estimated the costs associated with the maximum horn sound level requirements.

The table below presents estimated twenty-year monetary costs associated with complying with the requirements contained in the Final Rule using a 7 percent discount rate.

TOTAL TWENTY-YEAR COSTS (PV, 7%) [3]

Maximum Horn Sound Level	$3,136,020
Relocations Due to Resumption of Horn Sounding	1,676,663
Pre-Rule Quiet Zones—Nationwide, Excluding Chicago Area	14,827,438
Intermediate Quiet Zones	4,790,469
New Quiet Zones	16,261,900
Annual Update of NSRT/QZRIs and Notification	25,426

Total Twenty-Year Costs associated with implementation of this rule are estimated to total $40,717,916 (PV, 20 Years, 7%).

In general there has been a downward trend in collisions at grade crossings nationwide due to the implementation of various private and public safety initiatives such as Operation Lifesaver and other public education and awareness campaigns. Costs presented in this analysis may be overstated to the extent that such initiatives would lead to the eventual implementation of some of the same or equivalent safety measures that this rule requires for the establishment of quiet zones. In such cases, this rule may be merely accelerating implementation and the rate of expenditures.

The direct safety benefit of this Final Rule is the reduction in casualties that result from collisions between trains and highway users at public at-grade highway-rail crossings. Implementation of this rule will ensure that (1) locomotive horns are sounded to warn highway users of approaching trains; or (2) rail corridors where train horns do not sound will have a level of risk that

[3] Present Value (PV) provides a way of converting future benefits and costs into equivalent dollars today so that benefit and cost streams that involve different time paths may be compared. The formula used to calculate these flows is: $1/(1+I)^t$ where ''I'' is the discount rate, and ''t'' is the year. Per guidance from the Office of Management and Budget, a discount rate of .07 is used in this analysis.

is no higher than the average risk level at gated crossings nationwide where locomotive horns are sounded regularly; or (3) the effectiveness of horns is compensated for in rail corridors where train horns do not sound.

FRA has reviewed trends in collision rates for whistle ban crossings going back to 1980 and believes that collision rates over the twenty-years that this analysis covers will be no higher than 4 percent. The following table presents anticipated twenty-year safety benefits expressed in monetary terms assuming that collisions decline at an average rate of 4 percent annually and using a 7 percent discount rate.

TOTAL TWENTY-YEAR SAFETY BENEFITS MONETIZED (PV, 7%)

Maximum Sound Level	Not Quantifiable
Casualties Prevented (Cancellation of W-Bans)	$5,810,789
Pre-Rule QZs Nationwide (Excluding Chicago Area)	26,422,526
Intermediate Quiet Zones	6,302,667
New Quiet Zones	18,602,675
Total	57,138,657

In terms of collisions and casualties, over the next twenty years, FRA anticipates implementation of this rule will result in the prevention of 95 collisions, 8 fatalities, and 46 injuries.

In addition to the prevention of casualties, FRA estimates that, over the next twenty years, this collision prevention will result in a reduction of approximately $300,000 in highway vehicle, railroad equipment, and track damage.

This analysis covers the first twenty years of the rule and includes some compliance costs that will be incurred towards the end of the period. Unlike the benefits associated with costs incurred in the early years of the rule, much of the twenty-year stream of benefits associated with these costs is not captured in this analysis. Safety benefits are understated to the extent that many years of safety benefits resulting from safety measures implemented in out-years are not included.

Some of the unquantified benefits of this Final Rule include reductions in freight and passenger train delays, both of which can be very significant when grade crossing collisions occur, and collision investigation efforts. Although these benefits are not quantified in this analysis, their monetary value is significant.

Because such events are rare, FRA has not attempted to estimate the value of avoiding events in which a highway-rail collision results in a derailment, with harm to persons on the train or release of hazardous materials into the community.

Maximum horn sound level requirements will limit community disruption by not allowing horns to be sounded any louder than necessary to provide motorists with adequate warning of a train's approach. The benefit in noise reduction due to this change in maximum horn loudness is not readily quantifiable.

Another unquantified benefit of this rule is elimination of some locomotive horn noise disruption to some railroad employees and those who may reside near industrial areas served by railroads. Locomotive horns will no longer have to be sounded at individual highway-rail grade crossings at which the maximum authorized operating speed for that segment of track is 15 miles per hour or less and properly equipped flaggers (as defined in by 49 CFR 234.5, but who for purposes of this rule can also be crew members) provide warning to motorists. This rule will allow engineers, who were probably already exercising some level of discretion as to the duration and sound level of locomotive horn sounding, to stop sounding the horn under these circumstances at no additional cost.

This analysis does not quantify the benefit of eliminating community disruption caused by the sounding of train horns, nor does it quantify costs from increased noise at crossings where horns will sound where they were previously silent.

In an effort to determine the costs to a community associated with the locomotive horn, FRA examined the effects of sounding of locomotive horns on property values. This effort was based on the assumption that property values reflect concerns of property owners that are often subjective and otherwise difficult to quantify. For a full discussion of the effects of sounding locomotive horns on property values, see appendix A to the Regulatory Evaluation.

Research shows that residential property markets are influenced by a variety of factors including structural features of the property, local fiscal conditions, and neighborhood characteristics. Hedonic housing price models treat a property as a bundle of characteristics, with each individual characteristic generating an influence on the price of the property. For example, additional structural characteristics such as bathrooms, bedrooms, interior or exterior square footage increase the value of residential properties. Likewise, neighborhood characteristics are expected to influence property prices. For example, homes that are in relatively close proximity to noxious activities such as hazardous waste sites, incinerators, etc. have been shown to have lower values, other things equal. Thus, a carefully designed hedonic model can be used to implicitly value locational attributes that have no explicit market price.

The effects of the sounding of locomotive horns on property values have been studied recently in response to the NPRM. While initial results are available, unfortunately they are not conclusive. David E. Clark performed one study for the FRA, and Schwieterman and Baden of the Chaddick Institute performed the other. According to Clark, the study performed for FRA was ''just a first step in understanding how train whistles influence local property values.'' Schwieterman and Baden of the Chaddick Institute emphasize that their ''report is a preliminary assessment of a complex issue. Some of our findings are speculative in nature.'' Those who have studied the issue agree that further study is needed to reach a better understanding of the true effects of locomotive horn sounding on property values. Clark concluded that there is little indication that the decision of a railroad to ignore whistle bans (and thus sound the locomotive horn) had any permanent and appreciable influence on the housing values in the three communities analyzed. Clark offers two explanations for the lack of effect on property values. First, those buying property within the audible range of a highway-rail grade crossing likely consider the possibility that train whistles may be sounded at the crossing in the future. Second, the railroad's action generated dynamic changes in the composition of residents that served to mitigate the initial impact of the action. Residents most sensitive to the sounding of locomotive horns moved away and were replaced with those less sensitive to such sounding.

The Chaddick Institute study evaluated the probable costs of the noise generated by locomotive horns at grade crossings in the Chicago area. The study concluded that the region would experience significant losses in property value from sounding of horns at crossings currently subject to whistle bans. The study also concluded that even if property values do not fall, homeowners that are forced to move away may incur other real economic costs. For the reasons discussed in

appendix A to the Regulatory Evaluation, FRA has concluded that it is not likely that the overall costs associated with sounding the horns where they are not currently sounded will be as high as the Chaddick Institute study concludes.

Although there are airport and highway hedonic property value studies, FRA has not applied them to grade crossings for a number of reasons. The types of noise experienced by residents near highways and airports can be different from that experienced by residents near highway-rail grade crossings. Highways and airports where noise is an issue have higher daily volumes of motor vehicle and aircraft traffic than grade crossings with whistle bans. The noise produced by locomotive horns at crossings is also generally more intermittent than that produced at airports and highways.

The effect of highways and airports on nearby property values can also be very different than that of highway-rail at-grade crossings on nearby property values. For instance, airports are a source of employment for residents in the community. Although airport employees may not desire to reside in properties immediately adjacent to airports, they probably want to reside relatively close by. Few highway users desire to reside in properties immediately adjacent to highways, however many probably want to reside close enough to have easy access to highways. Such situations may greatly influence the magnitude of difference between property values of residences immediately adjacent to highways and airports compared to property values of residences that are still very close to highways and airports yet not adjacent. Since there generally is no incentive to residing near highway-rail at-grade crossings (unless there happens to be a commuter rail station nearby) the difference in property values between residences immediately adjacent to grade crossings and those a little further away is probably not as great.

Studies of airport and highway noise compare property values of residences adjacent to the source of noise to property values of residences that are near but not adjacent to the source of noise. To isolate the effect of the noise itself and thereby make these studies more relevant to the highway-rail grade crossing context, the effect of the incentive for residing nearby, versus adjacent to, would have to be removed from the studies of airport and highway noise. Given the differences in (1) types of noise produced by highway vehicles and aircraft versus locomotive horns and (2) effects of highways and airports on nearby property values versus effects of grade crossings on property values, FRA believes that results from hedonic studies of airport and highway noises on property values are not directly transferable to locomotive horn noise effects on property values.

It is important to note that since this rule is permissive as to the establishment of quiet zones, communities will establish quiet zones to the extent that the perceived benefit of elimination of the train horn disruption coupled with the safety benefit of any safety enhancements exceeds the costs of compliance associated with the requirements for establishing New Quiet Zones.

FRA is confident that the benefits in terms of lives saved and injuries prevented will exceed the costs imposed on society by this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of final rules to assess their impact on small entities unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. Data available to FRA indicates that this rule may have minimal economic impact on a substantial number of small entities (railroads) and possibly a significant economic impact on a few small entities (government jurisdictions and small businesses). However, there is no indication that this rule will have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) did not submit comments to the docket for this rulemaking in response to the Initial Regulatory Flexibility Assessment that accompanied the NPRM or the Regulatory Flexibility Assessment that accompanied the Interim Final Rule. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FRA has performed a Final Regulatory Flexibility Assessment (FRFA) on small entities that potentially can be affected by this Final Rule. The FRFA is summarized in this preamble as required by the Regulatory Flexibility Act. The full FRFA is included in the Regulatory Evaluation, which is available in the public docket of this proceeding.

This is essentially a safety rule that implements as well as minimizes the potential negative impacts of a Congressional mandate to blow train whistles and horns at all public crossings. Some communities believe that the sounding of train whistles at every crossing is excessive and an infringement on community quality of life, and therefore have enacted ''whistle bans'' that prevent the trains from sounding their whistles entirely, or during particular times (usually at night). Some communities would like to establish ''quiet zones'' where train horns would not be routinely sounded, but are awaiting issuance of this rule to do so. FRA is concerned that with the increased risk at grade crossings where train whistles are not sounded, or another means of warning utilized, collisions and casualties may increase significantly. The rule contains low risk based provisions for communities to establish quiet zones. Some crossing corridors may already be at risk levels that are permissible under this rule and would not need to reduce risk levels any further to establish quiet zones. Otherwise, communities establishing Pre-Rule Quiet Zones may implement sufficient safety measures along whistle-ban corridors to reduce risk to permissible levels. In addition to having permissible risk levels, all crossings in New and Intermediate Quiet Zones will have to be equipped with gates and flashing lights. If a community elects to simply follow the mandate, horn sounding will resume and there will be a noise impact on small businesses that exist along crossings where horns are not currently routinely sounded. If a community elects to implement sufficient safety measures to comply with the requirements for establishing a quiet zone, then the governmental jurisdiction will be impacted by the cost of such program or system. To the extent that potential quiet zone crossing corridors already have average risk levels permissible under this rule, and, in the case of New and Intermediate Quiet Zones, every crossing is equipped with gates and flashing lights, communities will only incur administrative costs associated with establishing and maintaining quiet zones.

The costs of implementing this Final Rule will predominately be on the governmental jurisdictions of communities some of which are ''small governmental jurisdictions.'' As defined by the SBA this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand. The most significant impacts from this rule will be on about 260 governmental jurisdictions whose communities currently have either formal or informal whistle bans in place. FRA estimates that approximately 70 percent (*i.e.* 193

communities) of these governmental jurisdictions are considered to be small entities.

FRA has recently published final a policy which establishes ''small entity'' as being railroads which meet the line haulage revenue requirements of a Class III railroad. As defined by 49 CFR 1201.1–1, Class III railroads are those railroads who have annual operating revenues of $20 million per year or less. Hazardous material shippers or contractors that meet this income level will also be considered as small entities. FRA is using this definition of small entity for this rulemaking. The FRA believes that approximately 640 small railroads would be minimally impacted by train horn sound level testing requirements contained in this rule. In addition, some small businesses that operate along or nearby rail lines that currently have whistle bans in place that potentially may not after the implementation of this rule, could be moderately impacted.

Alternative options for complying with this rule include allowing the train whistle to be blown. This alternative has no direct costs associated with it for the governmental jurisdiction. Other alternatives include ''gates with median barriers'' which are estimated to cost between $13,000 and $15,000 for simple installations; upgrade two-quadrant gate systems to four-quadrant gate systems at an estimated cost of $100,000–$300,000 plus annual maintenance costs of $2,500–$3,000; and ''Photo enforcement'' which is estimated to cost $28,000–$65,500 per crossing, and have annual maintenance costs of $6,600–$24,000 per crossing. Finally, FRA has not limited compliance to the lists provided in appendix A or appendix B of the rule. The rule provides for supplementary safety measures that might be unique or different. For such an alternative, an analysis would have to accompany the option that would demonstrate that the number of motorists that violate the crossing is equivalent of less than that of blowing the whistle. FRA intends to rely on the creativity of communities to formulate solutions which will work for that community.

FRA does not know how many small businesses are located within a distance of the affected highway-rail crossings where the noise from the whistle blowing could be considered to be nuisance and bad for business. Concerns have been advanced by owners and operators of hotels, motels and some other establishments as a result of numerous town meetings and other outreach sessions in which FRA has participated during development of this rule. If supplementary safety measures are implemented to create a quiet zone then such small entities should not be impacted. FRA held 12 public hearings nationwide following issuance of the NPRM and requested comments to the docket from small businesses that feel they will be adversely impacted by the requirements contained in the NPRM. FRA received no comments in response.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Tot. annual burden cost
222.11—Penalties	340 Public Authorities.	5 false reports/rcd	2 hours	10 hours	$370
222.15—Petitions for Waivers	340 Public Authorities.	5 petitions	4 hours	20 hours	740
222.17—Applications To Be Recognized as a State Agency.	68 State Agencies	13 applications	8 hours	104 hours	6,344
222.39—Establishment of Quiet Zones:					
—Public Authority Application to FRA.	340 Public Authorities.	105 Applications	80 hours	8,400 hours	512,400
—Diagnostic Team Reviews	340 Public Authorities.	53 reviews	32 hours	1,696 hours	0 (Cost incl. RIA)
—Updated Crossing Inventory Form.	340 Public Authorities.	302 forms	1 hour	302 hours	0 (Cost incl. RIA)
—60-Day Comment Period: Copies of Quiet Zone Application.	340 Public Authorities.	630 copies	10 minutes	105 hours	6,405
—Comments on Applications	340 Public Authorities.	2 comments	2.5 hours	5 hours	185
222.41—Pre-Rule Quiet Zones Which Qualify For Automatic Approval—Notices/Notice Copies.	262 communities/ Pub. Auth..	262 notices + 1572 notifications.	40 hours + 10 min.	10,742 hours	0 (Cost incl. RIA)
—Certifications	262 communities/ Pub. Auth..	262 certifications	5 minutes	22 hours	0 (Cost incl. RIA)
—Updated Grade Crossing Inventory Forms.	200 communities/ Pub. Auth..	1,182 Forms	1 hour	1,182 hours	0 (Cost incl. RIA)
—Pre-Rule Quiet Zones That Will Not Be Established By Automatic Approval.	103 Communities	103 notices + 618 notifications.	40 hours + 10 min.	4,223 hours	0 (Cost incl. RIA)
—Certifications	103 Communities	103 certifications	5 minutes	9 hours	0 (Cost incl. RIA)
—Updated Crossing Inventory Forms.	103 Communities	416 Forms	1 hour	416 hours	0 (Cost incl. RIA)
222.42—Intermediate Quiet Zones and Intermediate Partial Quiet Zones—Notices/Notifications.	3 Communities	3 notices + 18 notifications.	40 hours + 10 min.	123 hours	7,503

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Tot. annual burden cost
—Updated Grade Crossing Inventory Forms.	3 Communities	71 Forms	1 hour	71 hours	0 (Cost incl. RIA)
222.43—Notice and Other Information Required to Establish a Quiet Zone.	99 Communities ...	99 notices + 594 notifications.	40 hours + 10 min.	4,059 hours	247,599
—Updated Grade Crossing Inventory Forms.	302 Communities	376 Forms	1 hour	376 hours	0 (Cost incl. RIA)
—60-Day Comment Period on Notices of Intent.	715 Railroads/ State Agencies.	70 comments	4 hours	280 hours	10,360
—Notice of Intent to Continue Pre-Rule Quiet Zone or Partial Quiet Zone.	177 Communities	177 notices + 1,062 notification.	1 hour + 10 min. ..	354 hours	21,594
—Updated Grade Crossing Inventory Forms.	177 Communities	1,100 Forms	1 hour	1,100 hours	67,100
—Certifications Continuing Quiet Zones.	177 Communities	177 certifications ..	5 minutes	15 hours	0 (Cost incl. RIA)
—Certifications Establishing Quiet Zones.	97 Communities ...	97 certifications	5 minutes	8 hours	0 (Cost incl. RIA)
222.47—Periodic Updates:					
—Quiet Zones Which Do Not Have Supplementary Safety Measures at Each Public Crossing.	200 Public Authorities.	9 Affirmations + 54 Copies.	30 minutes + 2 min.	6 hours	0 (Cost incl. RIA)
—Updated Crossing Inventory Forms.	200 Public Authorities.	45 Forms	1 hour	45 hours	0 (Cost incl. RIA)
222.51—Review of Quiet Zone Status—Public Authority Written Statements/Commitments.	9 Public Authorities.	2 statements	5 hours	10 hours	610
—Review at FRA's Initiative—Comments.	3 Public Authorities.	60 comments	30 minutes	30 hours	1,830
222.55—Approval of New SSMs or ASMs—Letters.	265 Interested Parties.	1 letter	30 minutes	1 hour	61
—Comments	265 Interested Parties.	5 comments	30 minutes	3 hours	183
—Demo of New SSM/ASM & Approval Application.	265 Interested Parties.	1 letter	30 minutes	1 hour	61
222.57—Review of Assoc. Administrator's Actions.	265 Public Authorities/Int. Parties.	1 petition + 6 petition copies.	1 hour + 2 min.	1 hour	61
—Petition For Reconsideration by Pub. Authority.	200 Public Authorities.	1 petition + 6 petition copies.	5 hours + 2 min. ..	5 hours	305
—Additional Documents/Materials	200 Public Authorities.	1 document	2 hours	2 hours	122
—Request For Informal Hearing	200 Public Authorities.	1 letter	30 minutes	1 hour	61
222.59—Use of Wayside Horns—Notices/Copies.	200 Public Authorities.	10 notices + 60 notice copies.	5 hours + 10 min.	60 hours	3,660
Appendix B: Non-Engineering ASMs:					
—Records For Programmed Enforcement/Public Educ..	200 Public Authorities.	20 records	500 hours	10,000 hours	610,000
—Records For Photo Enforcement.	200 Public Authorities.	20 records	9 hours	180 hours	10,980
229.129—Audible Warning Devices—Testing Reports or Records.	684 Railroads	23,230 records	1 hour	23,230 hours	859,510
—Retests of Locomotive Horns—Records.	684 Railroads	650 records	1 hour	650 hours	24,050

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan at 202–493–6292.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain

current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

A Record of Decision has been prepared and is available in the public docket.

E. Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a Federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. * * *''

FRA has complied with E.O. 13132 in issuing this rule. FRA consulted extensively with State and local officials prior to issuance of the NPRM, and we have taken very seriously the concerns and views expressed by State and local officials as expressed in written comments and testimony at the various public hearings throughout the country. FRA staff provided briefings to many State and local officials and organizations during the comment period to encourage full public participation in this rulemaking. As discussed earlier in this preamble, because of the great interest in this subject throughout various areas of the country, FRA was involved in an extensive outreach program to inform communities which presently have whistle bans of the effect of the Act and the regulatory process. Since the passage of the Act, FRA headquarters and regional staff have met with a large number of local officials. FRA also held a number of public meetings to discuss the issues and to receive information from the public. In addition to local citizens, both local and State officials attended and participated in the public meetings. Additionally, FRA took the unusual step of establishing a public docket before formal initiation of rulemaking proceedings in order to enable citizens and local officials to comment on how FRA might implement the Act and to provide insight to FRA. FRA received comments from representatives of Portland, Maine; Maine Department of Transportation; Acton, Massachusetts; Wisconsin's Office of the Commissioner of Railroads; a Wisconsin State representative; a Massachusetts State senator; the Town of Ashland, Massachusetts; Bellevue, Iowa; and the mayor of Batavia, Illinois.

Since passage of the Act in 1994, FRA has consulted and briefed representatives of the American Association of State Highway and Transportation Officials (AASHTO), the National League of Cities, National Association of Regulatory Utility Commissioners, National Conference of State Legislatures, and others. Additionally we have provided extensive written information to all United States Senators and a large number of Representatives with the expectation that the information would be shared with interested local officials and constituents.

Prior to issuance of the NPRM, FRA had been in close contact with, and has received many comments from Chicago area municipal groups representing suburban areas in which, for the most part, locomotive horns are not routinely sounded. The Chicago area Council of Mayors, which represents over 200 cities and villages with over four million residents outside of Chicago, provided valuable information to FRA as did the West Central Municipal Conference and the West Suburban Mass Transit District, both of suburban Chicago.

Another association of suburban Chicago local governments, the DuPage [County] Mayors and Managers Conference, provided comments and information. Additionally, FRA officials met with many Members of Congress, who have invited FRA to their districts and have provided citizens and local officials with the opportunity to express their views on this rulemaking process. These exchanges, and others conducted directly through FRA's regional crossing managers, have been very valuable in identifying the need for flexibility in preparing the proposed rule.

Under 49 U.S.C. 20106, issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce. For further discussion of the effect of this rule on State and local laws and ordinances, see § 222.7 and its accompanying discussion.

As noted, this rulemaking is required by 49 U.S.C. 20153. The statute both requires that the Department issue this rule and sets out clear guidance as to the structure of such rule. The statute clearly and unambiguously requires the Department to issue rules requiring locomotive horns to be sounded at every public grade crossing. The Department has no discretion as to this aspect of the rule. The statute also makes clear that the Federal government must have a leading role in establishing the framework for providing exceptions to the requirement that horns sound at every public crossing. While some States and communities expressed opposition to Federal involvement in this area which historically has been subject to State regulation, the majority of State and local community commenters recognized and accepted the statutorily required Federal involvement. Of concern to many of these commenters, however, was the issue as to whether States or local communities should have primary responsibility for creation of quiet zones. As further discussed in the section-by-section analysis regarding ''Who may establish a quiet zone?'', States generally felt that they should have a primary role in establishing quiet zones and in administering a quiet zone. Comments from local governments tended to support the contrary view that local political subdivisions should establish quiet zones. A review of § 20153 indicates a clear Congressional preference that decision-makers be local authorities. This final rule provides non-Federal parties extensive involvement in decision-making pertaining to the creation of quiet zones. This final rule has increased the role of States in creation of quiet zones and has provided more opportunities for non-Federal parties, including States to have input in decisions made regarding creation and termination of quiet zones. However, given the nature of the competing interests of State and local governments in this area, FRA could not fully meet the concerns of both groups. For the reasons detailed in the section-by-section analysis, of the final rule and the interim final rule, the concerns of local communities have been substantially met.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent

that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,00,000 or more (adjusted annually for inflation)[currently $120,700,000] in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. The rule issued today will not result in the expenditure, in the aggregate, of $120,700,000 or more in any one year, and thus preparation of a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this Final rule in accordance with Executive Order 13211 and has determined that this Final Rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

18. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment), if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 222

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Locomotives, Penalties, Railroad safety.

■ In consideration of the foregoing, FRA is amending chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

■ 1. Part 222 is added to read as follows:

PART 222—USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY-RAIL GRADE CROSSINGS

Subpart A—General

Subpart B—Use of Locomotive Horns

Subpart C—Exceptions to the Use of the Locomotive Horn

Silenced Horns at Individual Crossings

Silenced Horns at Groups of Crossings—Quiet Zones

Authority: 28 U.S.C. 2461, note; 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 49 CFR 1.49.

Subpart A—General

§ 222.1 What is the purpose of this regulation?

The purpose of this part is to provide for safety at public highway-rail grade crossings by requiring locomotive horn use at public highway-rail grade crossings except in quiet zones established and maintained in accordance with this part.

§ 222.3 What areas does this regulation cover?

(a) This part prescribes standards for sounding locomotive horns when locomotives approach and pass through public highway-rail grade crossings. This part also provides standards for the creation and maintenance of quiet zones within which locomotive horns need not be sounded.

(b) The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the intent of FRA that the remaining provisions shall continue in effect.

(c) This part does not apply to any Chicago Region highway-rail grade crossing where the railroad was excused from sounding the locomotive horn by the Illinois Commerce Commission, and

where the railroad did not sound the horn, as of December 18, 2003.

§ 222.5 What railroads does this regulation apply to?

This part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Passenger railroads that operate only on track which is not part of the general railroad system of transportation and that operate at a maximum speed of 15 miles per hour over public highway-rail grade crossings; and

(c) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation. *See* 49 CFR part 209, appendix A for the definitive statement of the meaning of the preceding sentence.

§ 222.7 What is this regulation's effect on State and local laws and ordinances?

(a) Except as provided in paragraph (b) of this section, issuance of this part preempts any State law, rule, regulation, or order governing the sounding of the locomotive horn at public highway-rail grade crossings, in accordance with 49 U.S.C. 20106.

(b) This part does not preempt any State law, rule, regulation, or order governing the sounding of the locomotive horn at any highway-rail grade crossing described in § 222.3(c) of this part.

(c) Except as provided in §§ 222.25 and 222.27, this part does not preempt any State law, rule, regulation, or order governing the sounding of locomotive horns at private highway-rail grade crossings or pedestrian crossings.

(d) Inclusion of SSMs and ASMs in this part or approved subsequent to issuance of this part does not constitute federal preemption of State law regarding whether those measures may be used for traffic control. Individual states may continue to determine whether specific SSMs or ASMs are appropriate traffic control measures for that State, consistent with Federal Highway Administration regulations and the MUTCD. However, except for the SSMs and ASMs implemented at highway-rail grade crossings described in § 222.3(c) of this part, inclusion of SSMs and ASMs in this part does constitute federal preemption of State law concerning the sounding of the locomotive horn in relation to the use of those measures.

(e) Issuance of this part does not constitute federal preemption of administrative procedures required under State law regarding the modification or installation of engineering improvements at highway-rail grade crossings.

§ 222.9 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alternative safety measures (ASM) means a safety system or procedure, other than an SSM, established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority and which, after individual review and analysis by the Associate Administrator, is determined to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties at specific highway-rail grade crossings. Appendix B to this part lists such measures.

Associate Administrator means the Associate Administrator for Safety of the Federal Railroad Administration or the Associate Administrator's delegate.

Channelization device means a traffic separation system made up of a raised longitudinal channelizer, with vertical panels or tubular delineators attached, that is placed between opposing highway lanes designed to alert or guide traffic around an obstacle or to direct traffic in a particular direction. ''Tubular markers'' and ''vertical panels'' as described in sections 6F.57 and 6F.58, respectively, of the MUTCD, are acceptable channelization devices for purposes of this part. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the channelization device.

Chicago Region means the following six counties in the State of Illinois: Cook, DuPage, Lake, Kane, McHenry and Will.

Crossing Corridor Risk Index means a number reflecting a measure of risk to the motoring public at public grade crossings along a rail corridor, calculated in accordance with the procedures in appendix D of this part, representing the average risk at each public crossing within the corridor. This risk level is determined by averaging among all public crossings within the corridor, the product of the number of predicted collisions per year and the predicted likelihood and severity of casualties resulting from those collisions at each public crossing within the corridor.

Diagnostic team as used in this part, means a group of knowledgeable representatives of parties of interest in a highway-rail grade crossing, organized by the public authority responsible for that crossing, who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations or recommendations for the public authority concerning safety needs at that crossing.

Effectiveness rate means a number between zero and one which represents the reduction of the likelihood of a collision at a public highway-rail grade crossing as a result of the installation of an SSM or ASM when compared to the same crossing equipped with conventional active warning systems of flashing lights and gates. Zero effectiveness means that the SSM or ASM provides no reduction in the probability of a collision, while an effectiveness rating of one means that the SSM or ASM is totally effective in eliminating collision risk. Measurements between zero and one reflect the percentage by which the SSM or ASM reduces the probability of a collision.

FRA means the Federal Railroad Administration.

Grade Crossing Inventory Form means the U.S. DOT National Highway-Rail Grade Crossing Inventory Form, FRA Form F6180.71. This form is available through the FRA's Office of Safety, or on FRA's Web site at *http://www.fra.dot.gov*.

Intermediate Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns for a specified period of time during the evening or nighttime hours, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads for a specified period of time during the evening and/or nighttime hours, and at which such statutes, ordinances or agreements were in place and enforced or observed as of December 18, 2003, but not as of October 9, 1996.

Intermediate Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of

December 18, 2003, but not as of October 9, 1996.

Locomotive means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

Locomotive horn means a locomotive air horn, steam whistle, or similar audible warning device (see 49 CFR 229.129) mounted on a locomotive or control cab car. The terms ''locomotive horn'', ''train whistle'', ''locomotive whistle'', and ''train horn'' are used interchangeably in the railroad industry.

Median means the portion of a divided highway separating the travel ways for traffic in opposite directions.

MUTCD means the Manual on Traffic Control Devices published by the Federal Highway Administration.

Nationwide Significant Risk Threshold means a number reflecting a measure of risk, calculated on a nationwide basis, which reflects the average level of risk to the motoring public at public highway-rail grade crossings equipped with flashing lights and gates and at which locomotive horns are sounded. For purposes of this rule, a risk level above the Nationwide Significant Risk Threshold represents a significant risk with respect to loss of life or serious personal injury. The Nationwide Significant Risk Threshold is calculated in accordance with the procedures in appendix D of this part. Unless otherwise indicated, references in this part to the Nationwide Significant Risk Threshold reflect its level as last published by FRA in the **Federal Register**.

New Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded between the hours of 10 p.m. and 7 a.m., but are routinely sounded during the remaining portion of the day, and which does not qualify as a Pre-Rule Partial Quiet Zone.

New Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which routine sounding of locomotive horns is restricted pursuant to this part and which does not qualify as either a Pre-Rule Quiet Zone or Intermediate Quiet Zone.

Non-traversable curb means a highway curb designed to discourage a motor vehicle from leaving the roadway. Non-traversable curbs are used at locations where highway speeds do not exceed 40 miles per hour and are at least six inches high. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the curb.

Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which locomotive horns are not routinely sounded for a specified period of time during the evening and/or nighttime hours.

Pedestrian crossing means, for purposes of this part, a separate designated sidewalk or pathway where pedestrians, but not vehicles, cross railroad tracks. Sidewalk crossings contiguous with, or separate but adjacent to, public highway-rail grade crossings, are presumed to be part of the public highway-rail grade crossing and are *not* considered pedestrian crossings.

Power-out indicator means a device which is capable of indicating to trains approaching a grade crossing equipped with an active warning system whether commercial electric power is activating the warning system at that crossing. This term includes remote health monitoring of grade crossing warning systems if such monitoring system is equipped to indicate power status.

Pre-existing Modified Supplementary Safety Measure (Pre-existing Modified SSM) means a safety system or procedure that is listed in appendix A to this Part, but is not fully compliant with the standards set forth therein, which was installed before December 18, 2003 by the appropriate traffic control or law enforcement authority responsible for safety at the highway-rail grade crossing. The calculation of risk reduction credit for pre-existing modified SSMs is addressed in appendix B of this part.

Pre-existing Supplementary Safety Measure (Pre-existing SSM) means a safety system or procedure established in accordance with this part before December 18, 2003 which was provided by the appropriate traffic control or law enforcement authority responsible for safety at the highway-rail grade crossing. These safety measures must fully comply with the SSM requirements set forth in appendix A of this part. The calculation of risk reduction credit for qualifying pre-existing SSMs is addressed in appendix A.

Pre-Rule Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns for a specified period of time during the evening and/or nighttime hours, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads for a specified period of time during the evening and/or nighttime hours, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003.

Pre-Rule Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003.

Private highway-rail crossing means, for purposes of this part, a highway-rail at grade crossing which is not a public highway-rail grade crossing.

Public authority means the public entity responsible for traffic control or law enforcement at the public highway-rail grade or pedestrian crossing.

Public highway-rail grade crossing means, for purposes of this part, a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. If a public authority maintains the roadway on both sides of the crossing, the crossing is considered a public crossing for purposes of this part.

Quiet zone means a segment of a rail line, within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded.

Quiet Zone Risk Index means a measure of risk to the motoring public which reflects the Crossing Corridor Risk Index for a quiet zone, after adjustment to account for increased risk due to lack of locomotive horn use at the crossings within the quiet zone (if horns are presently sounded at the crossings) and reduced risk due to implementation, if any, of SSMs and ASMs with the quiet zone. The calculation of the Quiet Zone Risk Index, which is explained in appendix

D of this part, does not differ for partial quiet zones.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Recognized State agency means, for purposes of this part, a State agency, responsible for highway-rail grade crossing safety or highway and road safety, that has applied for and been approved by FRA as a participant in the quiet zone development process.

Relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision in which the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. With respect to Pre-Rule Partial Quiet Zones, a relevant collision shall not include collisions that occur during the time period within which the locomotive horn is routinely sounded.

Risk Index With Horns means a measure of risk to the motoring public when locomotive horns are routinely sounded at every public highway-rail grade crossing within a quiet zone. In Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones, the Risk Index With Horns is determined by adjusting the Crossing Corridor Risk Index to account for the decreased risk that would result if locomotive horns were routinely sounded at each public highway-rail grade crossing.

Supplementary safety measure (SSM) means a safety system or procedure established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Associate Administrator to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. Appendix A of this part lists such SSMs.

Waiver means a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part.

Wayside horn means a stationary horn located at a highway rail grade crossing, designed to provide, upon the approach of a locomotive or train, audible warning to oncoming motorists of the approach of a train.

§ 222.11 What are the penalties for failure to comply with this regulation?

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of least $550 and not more than $11,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311. Appendix G of this part contains a schedule of civil penalty amounts used in connection with this part.

§ 222.13 Who is responsible for compliance?

Any person, including but not limited to a railroad, contractor for a railroad, or a local or State governmental entity that performs any function covered by this part, must perform that function in accordance with this part.

§ 222.15 How does one obtain a waiver of a provision of this regulation?

(a) Except as provided in paragraph (b) of this section, two parties must jointly file a petition (request) for a waiver. They are the railroad owning or controlling operations over the railroad tracks crossing the public highway-rail grade crossing and the public authority which has jurisdiction over the roadway crossing the railroad tracks.

(b) If the railroad and the public authority cannot reach agreement to file a joint petition, either party may file a request for a waiver; however, the filing party must specify in its petition the steps it has taken in an attempt to reach agreement with the other party, and explain why applying the requirement that a joint submission be made in that instance would not be likely to contribute significantly to public safety. If the Associate Administrator determines that applying the requirement for a jointly filed submission to that particular petition would not be likely to significantly contribute to public safety, the Associate Administrator shall waive the requirement for joint submission and accept the petition for consideration.. The filing party must also provide the other party with a copy of the petition filed with FRA.

(c) Each petition for waiver must be filed in accordance with 49 CFR part 211.

(d) If the Administrator finds that a waiver of compliance with a provision of this part is in the public interest and consistent with the safety of highway and railroad users, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 222.17 How can a State agency become a recognized State agency?

(a) Any State agency responsible for highway-rail grade crossing safety and/or highway and road safety may become a recognized State agency by submitting an application to the Associate Administrator that contains:

(1) A detailed description of the proposed scope of involvement in the quiet zone development process;

(2) The name, address, and telephone number of the person(s) who may be contacted to discuss the State agency application; and

(3) A statement from State agency counsel which affirms that the State agency is authorized to undertake the responsibilities proposed in its application.

(b) The Associate Administrator will approve the application if, in the Associate Administrator's judgment, the proposed scope of State agency involvement will facilitate safe and effective quiet zone development. The Associate Administrator may include in any decision of approval such conditions as he/she deems necessary and appropriate.

Subpart B—Use of Locomotive Horns

§ 222.21 When must a locomotive horn be used?

(a) Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive, or lead cab car shall be sounded when such locomotive or lead cab car is approaching a public

highway-rail grade crossing. Sounding of the locomotive horn with two long, one short, and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive or train occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together.

(b)(1) Except as provided in paragraph (b)(2) of this section, the locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing.

(2) Trains, locomotive consists, and individual locomotives traveling at speeds in excess of 45 mph shall not begin sounding the horn more than one-quarter mile (1,320 feet) in advance of the nearest public highway-rail grade crossing, even if the advance warning provided by the locomotive horn will be less than 15 seconds in duration.

(c) As stated in § 222.3(c) of this part, this section does not apply to any Chicago Region highway-rail grade crossing at which railroads were excused from sounding the locomotive horn by the Illinois Commerce Commission, and where railroads did not sound the horn, as of December 18, 2003.

§ 222.23 How does this regulation affect sounding of a horn during an emergency or other situations?

(a)(1) Notwithstanding any other provision of this part, a locomotive engineer may sound the locomotive horn to provide a warning to animals, vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the locomotive engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death, or property damage.

(2) Notwithstanding any other provision of this part, including provisions addressing the establishment of a quiet zone, limits on the length of time in which a horn may be sounded, or installation of wayside horns within quiet zones, this part does not preclude the sounding of locomotive horns in emergency situations, nor does it impose a legal duty to sound the locomotive horn in such situations.

(b) Nothing in this part restricts the use of the locomotive horn in the following situations:

(1) When a wayside horn is malfunctioning;

(2) When active grade crossing warning devices have malfunctioned and use of the horn is required by one of the following sections of this chapter: §§ 234.105, 234.106, or 234.107; or

(3) When grade crossing warning systems are temporarily out of service during inspection, maintenance, or testing of the system.

(c) Nothing in this part restricts the use of the locomotive horn for purposes other than highway-rail crossing safety (*e.g.*, to announce the approach of a train to roadway workers in accordance with a program adopted under part 214 of this chapter, or where required for other purposes under railroad operating rules).

§ 222.25 How does this rule affect private highway-rail grade crossings?

This rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings. Except as specified in this section, this part is not meant to address the subject of private grade crossings and is not intended to affect present State or local laws or orders, or private contractual or other arrangements regarding the routine sounding of locomotive horns at private highway-rail grade crossings.

(a) Private highway-rail grade crossings may be included in a quiet zone.

(b)(1) Private highway-rail grade crossings that are located in New Quiet Zones or New Partial Quiet Zones and allow access to the public, or which provide access to active industrial or commercial sites, may be included in a quiet zone only if a diagnostic team evaluates the crossing and the crossing is equipped or treated in accordance with the recommendations of such diagnostic team.

(2) The public authority shall provide the State agency responsible for grade crossing safety and all affected railroads an opportunity to participate in the diagnostic team review of private highway-rail grade crossings.

(c)(1) At a minimum, every private highway-rail grade crossing within a New Quiet Zone or New Partial Quiet Zone shall be marked by a crossbuck and a ''STOP'' sign, which are compliant with MUTCD standards unless otherwise prescribed by State law, and shall be equipped with advance warning signs in compliance with § 222.35(c) of this part.

(2) At a minimum, every private highway-rail grade crossing within a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone shall, by June 24, 2008, be marked by a crossbuck and a ''STOP'' sign, which are compliant with MUTCD standards unless otherwise prescribed by State law, and shall be equipped with advance warning signs in compliance with § 222.35(c) of this part.

§ 222.27 How does this rule affect pedestrian crossings?

This rule does not require the routine sounding of locomotive horns at pedestrian crossings. Except as specified in this section, this part is not meant to address the subject of pedestrian crossings and is not intended to affect State or local laws or orders, or private contractual or other arrangements, regarding the routine sounding of locomotive horns at pedestrian crossings.

(a) Pedestrian crossings may be included in a quiet zone.

(b) Pedestrian crossings that are located in New Quiet Zones or New Partial Quiet Zones may be included in a quiet zone only if a diagnostic team evaluates the crossings and the crossings are equipped or treated in accordance with the recommendations of such diagnostic team.

(c) The public authority shall provide the State agency responsible for grade crossing safety and all affected railroads an opportunity to participate in diagnostic team reviews of pedestrian crossings.

(d) *Advance warning signs.* (1) Each pedestrian crossing within a New Quiet Zone shall be equipped with a sign that advises the pedestrian that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(2) Each pedestrian crossing within a New Partial Quiet Zone shall be equipped with a sign that advises the pedestrian that train horns are not sounded at the crossing between the hours of 10 p.m. and 7 a.m. Such sign shall conform to the standards contained in the MUTCD.

(3) Each pedestrian crossing within a Pre-Rule Quiet Zone shall be equipped by June 24, 2008 with a sign that advises the pedestrian that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(4) Each pedestrian crossing within a Pre-Rule Partial Quiet Zone shall be equipped by June 24, 2008 with a sign that advises the pedestrian that train horns are not sounded at the crossing for a specified period of time. Such sign shall conform to the standards contained in the MUTCD.

Subpart C—Exceptions to the Use of the Locomotive Horn

§ 222.31 [Reserved]

Silenced Horns at Individual Crossings

§ 222.33 Can locomotive horns be silenced at an individual public highway-rail grade crossing which is not within a quiet zone?

(a) A railroad operating over an individual public highway-rail crossing may, at its discretion, cease the sounding of the locomotive horn if the locomotive speed is 15 miles per hour or less and train crew members, or appropriately equipped flaggers, as defined in 49 CFR 234.5, flag the crossing to provide warning of approaching trains to motorists.

(b) This section does not apply where active grade crossing warning devices have malfunctioned and use of the horn is required by 49 CFR 234.105, 234.106, or 234.107.

Silenced Horns at Groups of Crossings—Quiet Zones

§ 222.35 What are the minimum requirements for quiet zones?

The following requirements apply to quiet zones established in conformity with this part.

(a) *Minimum length.* (1)(i) Except as provided in paragraphs (a)(1)(ii) of this section, the minimum length of a New Quiet Zone or New Partial Quiet Zone established under this part shall be one-half mile along the length of railroad right-of-way.

(ii) The one-half mile minimum length requirement shall be waived for any New Quiet Zone or New Partial Quiet Zone that is added onto an existing quiet zone, provided there is no public highway-rail grade crossing at which locomotive horns are routinely sounded within one-half mile of the New Quiet Zone or New Partial Quiet Zone.

(2)(i) The length of a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone may continue unchanged from that which existed as of October 9, 1996.

(ii) With the exception of combining two adjacent Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones, the addition of any public crossing to a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone shall end the grandfathered status of that quiet zone and transform it into a New Quiet Zone or New Partial Quiet Zone that must comply with all requirements applicable to New Quiet Zones and New Partial Quiet Zones.

(iii) The deletion of any public crossing from a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone, with the exception of a grade separation or crossing closure, must result in a quiet zone of at least one-half mile in length in order to retain Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone status.

(3) A quiet zone may include highway-rail grade crossings on a segment of rail line crossing more than one political jurisdiction.

(b) *Active grade crossing warning devices.* (1) Each public highway-rail grade crossing in a New Quiet Zone established under this part must be equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators.

(2) With the exception of public highway-rail grade crossings that will be temporarily closed in accordance with appendix A of this part, each public highway-rail grade crossing in a New Partial Quiet Zone established under this part must be equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators.

(3) Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones must retain, and may upgrade, the grade crossing safety warning system which existed as of December 18, 2003. Any upgrade involving the installation or renewal of an automatic warning device system shall include constant warning time devices, where reasonably practical, and power-out indicators. In no event may the grade crossing safety warning system, which existed as of December 18, 2003, be downgraded. Risk reduction resulting from upgrading to flashing lights or gates may be credited in calculating the Quiet Zone Risk Index.

(c) *Advance warning signs.* (1) Each highway approach to every public and private highway-rail grade crossing within a New Quiet Zone shall be equipped with an advance warning sign that advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(2) Each highway approach to every public and private highway-rail grade crossing in a New Partial Quiet Zone shall be equipped with an advance warning sign that advises the motorist that train horns are not sounded at the crossing between the hours of 10 p.m. and 7 a.m. Such sign shall conform to the standards contained in the MUTCD.

(3) Each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Quiet Zone shall be equipped by June 24, 2008 with an advance warning sign that advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(4) Each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Partial Quiet Zone shall be equipped by June 24, 2008 with an advance warning sign that advises the motorist that train horns are not sounded at the crossing for a specified period of time. Such sign shall conform to the standards contained in the MUTCD.

(d) *Bells.* (1) Each public highway-rail grade crossing in a New Quiet Zone or New Partial Quiet Zone that is subjected to pedestrian traffic and equipped with one or more automatic bells shall retain those bells in working condition.

(2) Each public highway-rail grade crossing in a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone that is subjected to pedestrian traffic and equipped with one or more automatic bells shall retain those bells in working condition.

(e) All private crossings within the quiet zone must be treated in accordance with this section and § 222.25 of this part.

(f) All pedestrian crossings within a quiet zone must be treated in accordance with § 222.27 of this part.

(g) All public crossings within the quiet zone must be in compliance with the requirements of the MUTCD.

§ 222.37 Who may establish a quiet zone?

(a) A public authority may establish quiet zones that are consistent with the provisions of this part. If a proposed quiet zone includes public grade crossings under the authority and control of more than one public authority (such as a county road and a State highway crossing the railroad tracks at different crossings), both public authorities must agree to establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take such actions as are required by this part.

(b) A public authority may establish quiet zones irrespective of State laws covering the subject matter of sounding or silencing locomotive horns at public highway-rail grade crossings. Nothing in this part, however, is meant to affect any other applicable role of State agencies or

the Federal Highway Administration in decisions regarding funding or construction priorities for grade crossing safety projects, selection of traffic control devices, or engineering standards for roadways or traffic control devices.

(c) A State agency may provide administrative and technical services to public authorities by advising them, acting on their behalf, or acting as a central contact point in dealing with FRA; however, any public authority eligible to establish a quiet zone under this part may do so.

§ 222.38 Can a quiet zone be created in the Chicago Region?

Public authorities that are eligible to establish quiet zones under this part may create New Quiet Zones or New Partial Quiet Zones in the Chicago Region, provided the New Quiet Zone or New Partial Quiet Zone does not include any highway-rail grade crossing described in § 222.3(c) of this part.

§ 222.39 How is a quiet zone established?

(a) *Public authority designation.* This paragraph (a) describes how a quiet zone may be designated by a public authority without the need for formal application to, and approval by, FRA. If a public authority complies with either paragraph (a)(1), (a)(2), or (a)(3) of this section, and complies with the information and notification provisions of § 222.43 of this part, a public authority may designate a quiet zone without the necessity for FRA review and approval.

(1) A quiet zone may be established by implementing, at every public highway-rail grade crossing within the quiet zone, one or more SSMs identified in appendix A of this part.

(2) A quiet zone may be established if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, as follows:

(i) If the Quiet Zone Risk Index is already at, or below, the Nationwide Significant Risk Threshold without being reduced by implementation of SSMs; or

(ii) If SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold.

(3) A quiet zone may be established if SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at or below the Risk Index With Horns.

(b) *Public authority application to FRA.* (1) A public authority may apply to the Associate Administrator for approval of a quiet zone that does not meet the standards for public authority designation under paragraph (a) of this section, but in which it is proposed that one or more safety measures be implemented. Such proposed quiet zone may include only ASMs, or a combination of ASMs and SSMs at various crossings within the quiet zone. Note that an engineering improvement which does not fully comply with the requirements for an SSM under appendix A of this part, is considered to be an ASM. The public authority's application must:

(i) Contain an accurate, complete and current Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the proposed quiet zone;

(ii) Contain sufficient detail concerning the present safety measures at each public highway-rail grade crossing proposed to be included in the quiet zone to enable the Associate Administrator to evaluate their effectiveness;

(iii) Contain detailed information about diagnostic team reviews of any crossing within the proposed quiet zone, including a membership list and a list of recommendations made by the diagnostic team;

(iv) Contain a statement describing efforts taken by the public authority to work with each railroad operating over the public highway-rail grade crossings within the quiet zone and the State agency responsible for grade crossing safety. This statement shall also list any objections to the proposed quiet zone that were raised by the railroad(s) and State agency;

(v) Contain detailed information as to which SSMs and ASMs are proposed to be implemented at each public or private highway-rail grade crossing within the proposed quiet zone;

(vi) Contain a commitment to implement the proposed safety measures within the proposed quiet zone; and

(vii) Demonstrate through data and analysis that the proposed implementation of these measures will cause a reduction in the Quiet Zone Risk Index to, or below, either the Risk Index With Horns or the Nationwide Significant Risk Threshold.

(2) If the proposed quiet zone contains newly established public or private highway-rail grade crossings, the public authority's application for approval must also include five-year projected vehicle and rail traffic counts for each newly established grade crossing;

(3) *60-day comment period.* (i) The public authority application for FRA approval of the proposed quiet zone shall be provided, by certified mail, return receipt requested, to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator.

(ii) Except as provided in paragraph (b)(3)(iii) of this section, any party that receives a copy of the public authority application may submit comments on the public authority application to the Associate Administrator during the 60-day period after the date on which the public authority application was mailed.

(iii) If the public authority application for FRA approval contains written statements from each railroad operating over the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety stating that the railroad, vehicular traffic authority and State agencies have waived their rights to provide comments on the public authority application, the 60-day comment period under paragraph (b)(3)(ii) of this section shall be waived.

(4)(i) After reviewing any comments submitted under paragraph (b)(3)(ii) of this section, the Associate Administrator will approve the quiet zone if, in the Associate Administrator's judgment, the public authority is in compliance with paragraphs (b)(1) and (b)(2) of this section and has satisfactorily demonstrated that the SSMs and ASMs proposed by the public authority result in a Quiet Zone Risk Index that is either:

(A) At or below the Risk Index With Horns or

(B) At or below the Nationwide Significant Risk Threshold.

(ii) The Associate Administrator may include in any decision of approval such conditions as may be necessary to ensure that the proposed safety improvements are effective. If the Associate Administrator does not approve the quiet zone, the Associate Administrator will describe, in the decision, the basis upon which the decision was made. Decisions issued by the Associate Administrator on quiet zone applications shall be provided to all parties listed in paragraph (b)(3)(i) of

this section and may be reviewed as provided in §§ 222.57(b) and (d) of this part.

(c) Appendix C of this part contains guidance on how to create a quiet zone.

§ 222.41 How does this rule affect Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones?

(a) *Pre-Rule Quiet Zones that will be established by automatic approval.* (1) A Pre-Rule Quiet Zone may be established by automatic approval and remain in effect, subject to § 222.51, if the Pre-Rule Quiet Zone is in compliance with §§ 222.35 (minimum requirements for quiet zones) and 222.43 of this part (notice and information requirements) and the Pre-Rule Quiet Zone:

(i) Has at every public highway-rail grade crossing within the quiet zone one or more SSMs identified in appendix A of this part;

(ii) The Quiet Zone Risk Index as last published by FRA in the **Federal Register** is at, or below, the Nationwide Significant Risk Threshold; or

(iii) The Quiet Zone Risk Index as last published by FRA in the **Federal Register** is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the five years preceding April 27, 2005 or

(iv) The Quiet Zone Risk Index as last published by FRA in the **Federal Register** is at, or below, the Risk Index With Horns.

(2) The public authority shall provide Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part, no later than December 24, 2005.

(b) *Pre-Rule Partial Quiet Zones that will be established by automatic approval.*

(1) A Pre-Rule Partial Quiet Zone may be established by automatic approval and remain in effect, subject to § 222.51 of this part, if the Pre-Rule Partial Quiet Zone is in compliance with §§ 222.35 (minimum requirements for quiet zones) and 222.43 (notice and information requirements) of this part and the Pre-Rule Partial Quiet Zone:

(i) Has at every public highway-rail grade crossing within the quiet zone one or more SSMs identified in appendix A of this part;

(ii) The Quiet Zone Risk Index as last published by FRA in the **Federal Register** is at, or below, the Nationwide Significant Risk Threshold; or

(iii) The Quiet Zone Risk Index as last published by FRA in the **Federal Register** is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the five years preceding April 27, 2005. With respect to Pre-Rule Partial Quiet Zones, collisions that occurred during the time period within which the locomotive horn was routinely sounded shall not be considered ''relevant collisions''; or

(iv) The Quiet Zone Risk Index as last published by FRA in the **Federal Register** is at, or below, the Risk Index With Horns.

(2) The public authority shall provide Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part, no later than December 24, 2005.

(c) *Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that will not be established by automatic approval.* (1) If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone will not be established by automatic approval under paragraph (a) or (b) of this section, existing restrictions may, at the public authority's discretion, remain in place on an interim basis under the provisions of this paragraph (c) and upon compliance with § 222.43 (notice and information requirements) of this part. Continuation of a quiet zone beyond the interim periods specified in this paragraph will require implementation of SSMs or ASMs in accordance with § 222.39 of this part and compliance with the requirements set forth in §§ 222.25(c), 222.27(d), and 222.35 of this part.

(2)(i) In order to provide time for the public authority to plan for and implement quiet zones that are in compliance with the requirements of this part, a public authority may continue locomotive horn restrictions at Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones for a period of five years from June 24, 2005, provided the public authority has, within three years of June 24, 2005, filed with the Associate Administrator a detailed plan for establishing a quiet zone under this part, including, in the case of a plan requiring approval under § 222.39(b) of this part, all of the required elements of filings under that paragraph together with a timetable for implementation of safety improvements.

(ii) If, during the three-year period after June 24, 2005, the Quiet Zone Risk Index for the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone has fallen to a level at or below the Nationwide Significant Risk Threshold, the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone may remain in effect, subject to § 222.51 of this part, provided the public authority provides notification of Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone establishment in accordance with § 222.43 and has complied with the requirements of §§ 222.25(c), 222.27(d), and 222.35 by June 24, 2008.

(3) Locomotive horn restrictions may continue for an additional three years beyond the five-year period permitted by paragraph (b)(2)(i) of this section, if:

(i) Prior to June 24, 2008, the appropriate State agency provides to the Associate Administrator: a comprehensive State-wide implementation plan and funding commitment for implementing improvements at Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones which, when implemented, would enable them to qualify for a quiet zone under this part; and

(ii) Prior to June 24, 2009, either physical improvements are initiated at a portion of the crossings within the quiet zone, or the appropriate State agency has participated in quiet zone improvements in one or more jurisdictions elsewhere within the State.

(4) In the event that the safety improvements planned for the quiet zone require approval of FRA under § 222.39(b) of this part, the public authority should apply for such approval prior to December 24, 2007, to ensure that FRA has ample time in which to review such application prior to the end of the extension period.

(d) *Pre-Rule Partial Quiet Zones that will be converted to 24-hour Quiet Zones.* A Pre-Rule Partial Quiet Zone may be converted to a 24-hour quiet zone if the quiet zone is brought into compliance with the New Quiet Zone requirements set forth in §§ 222.25, 222.27, 222.35 and 222.39 of this part and notification of the establishment of a New 24-hour Quiet Zone is provided in accordance with § 222.43 of this part.

§ 222.42 How does this rule affect Intermediate Quiet Zones and Intermediate Partial Quiet Zones?

(a) Existing restrictions may, at the public authority's discretion, remain in place within the Intermediate Quiet Zone or Intermediate Partial Quiet Zone until June 24, 2006, provided the public authority complies with § 222.43 (notice and information requirements) of this part. Continuation of the quiet zone beyond June 24, 2006 will require implementation of SSMs or ASMs in accordance with § 222.39 of this part and compliance with the New Quiet Zone standards set forth in §§ 222.25, 222.27 and 222.35 of this part.

(b) *Conversion of Intermediate Partial Quiet Zones into 24-hour New Quiet Zones.* An Intermediate Partial Quiet Zone may be converted into a 24-hour New Quiet Zone when the quiet zone is

brought into compliance with the New Quiet Zone requirements set forth in §§ 222.25, 222.27, 222.35 and 222.39 (requirements for quiet zone establishment) of this part, provided notification of New Quiet Zone establishment is provided in accordance with § 222.43 (notice and information requirements) of this part.

§ 222.43 What notices and other information are required to create or continue a quiet zone?

(a)(1) The public authority shall provide written notice, by certified mail, return receipt requested, of its intent to create a New Quiet Zone or New Partial Quiet Zone under § 222.39 of this part. Such notification shall be provided to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; and the State agency responsible for grade crossing safety.

(2) The public authority shall provide written notification, by certified mail, return receipt requested, to continue a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone under § 222.41 of this part or to continue an Intermediate Quiet Zone or Intermediate Partial Quiet Zone under § 222.42 of this part. Such notification shall be provided to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator.

(3) The public authority shall provide written notice, by certified mail, return receipt requested, of its intent to file a detailed plan for a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone in accordance with § 222.41(c)(2) of this part. Such notification shall be provided to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; and the State agency responsible for grade crossing safety.

(4) The public authority shall provide written notice, by certified mail, return receipt requested, of the establishment of a quiet zone under § 222.39 or 222.41 of this part. Such notification shall be provided to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator.

(b) *Notice of Intent.* (1) *Required Contents.* The Notice of Intent shall include the following:

(i) A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing that would be included within the proposed quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

(ii) A statement of the time period within which restrictions would be imposed on the routine sounding of the locomotive horn imposed (*i.e.*, 24 hours or from 10 p.m. until 7 a.m.)

(iii) A brief explanation of the public authority's tentative plans for implementing improvements within the proposed quiet zone.

(iv) The name and title of the person who will act as point of contact during the quiet zone development process and the manner in which that person can be contacted.

(v) A list of the names and addresses of each party that will receive notification in accordance with paragraph (a)(1) of this section.

(2) *60-day comment period.* (i) A party that receives a copy of the public authority's Notice of Intent may submit information or comments about the proposed quiet zone to the public authority during the 60-day period after the date on which the Notice of Intent was mailed.

(ii) The 60-day comment period established under paragraph (b)(2)(i) of this section may terminate when the public authority obtains from each railroad operating over public grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety:

(A) Written comments; or

(B) Written statements that the railroad and State agency do not have any comments on the Notice of Intent (''no-comment statements''.)

(c) *Notice of Quiet Zone Continuation.* (1) *Timing.* (i) In order to prevent the resumption of locomotive horn sounding on June 24, 2005, the Notice of Quiet Zone Continuation under § 222.41 or 222.42 of this part shall be served no later than June 3, 2005.

(ii) If the Notice of Quiet Zone Continuation under § 222.41 or 222.42 of this part is mailed after June 3, 2005, the Notice of Quiet Zone Continuation shall state the date on which locomotive horn use at highway-rail grade crossings within the quiet zone shall cease, but in no event shall that date be earlier than 21 days after the date of mailing.

(2) *Required contents.* The Notice of Quiet Zone Continuation shall include the following:

(i) A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

(ii) A specific reference to the regulatory provision that provides the basis for quiet zone continuation, citing as appropriate, § 222.41 or 222.42 of this part.

(iii) A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (*i.e.*, 24 hours or nighttime hours only.)

(iv) An accurate and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects conditions currently existing at the crossing.

(v) The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

(vi) A list of the names and addresses of each party that will receive notification in accordance with paragraph (a)(2) of this section.

(vii) A statement signed by the chief executive officer of each public authority participating in the continuation of the quiet zone, in which the chief executive officer certifies that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

(d) *Notice of Detailed Plan.* (1) *Timing.* The Notice of Detailed Plan shall be served no later than four months before the filing of the detailed plan under § 222.41(c)(2) of this part.

(2) *Required contents.* The Notice of Detailed Plan shall include the following:

(i) A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing that is included in the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

(ii) A statement of the time period within which restrictions would be imposed on the routine sounding of the

locomotive horn imposed (*i.e.*, 24 hours or nighttime hours only.)

(iii) A brief explanation of the public authority's tentative plans for implementing improvements within the quiet zone.

(iv) The name and title of the person who will act as point of contact during the quiet zone development process and the manner in which that person can be contacted.

(v) A list of the names and addresses of each party that will receive notification in accordance with paragraph (a)(3) of this section.

(3) *60-day comment period.* A party that receives a copy of the public authority's Notice of Detailed Plan may submit information or comments about the proposed improvements to the public authority during the 60-day period after the date on which the Notice of Detailed Plan was mailed.

(e) *Notice of Quiet Zone Establishment.* (1) *Timing.* (i) The Notice of Quiet Zone Establishment shall provide the date upon which routine locomotive horn use at highway-rail grade crossings shall cease, but in no event shall the date be earlier than 21 days after the date of mailing.

(ii) If the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, the Notice of Quiet Zone Establishment shall not be mailed less than 60 days after the date on which the Notice of Intent was mailed, unless the Notice of Quiet Zone Establishment contains a written statement affirming that written comments and/or ''no-comment'' statements have been received from each railroad operating over public grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety in accordance with paragraph (b)(2)(ii) of this section.

(2) *Required contents.* The Notice of Quiet Zone Establishment shall include the following:

(i) A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

(ii) A specific reference to the regulatory provision that provides the basis for quiet zone establishment, citing as appropriate, § 222.39(a)(1), 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.39(b), 222.41(a)(1)(i), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(i), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv) of this part.

(A) If the Notice contains a specific reference to § 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv) of this part, it shall include a copy of the FRA web page that contains the quiet zone data upon which the public authority is relying (*http://www.fra.dot.gov/us/content/1337*).

(B) If the Notice contains a specific reference to § 222.39(b) of this part, it shall include a copy of FRA's notification of approval.

(iii) If a diagnostic team review was required under § 222.25 or 222.27 of this part, the Notice shall include a statement affirming that the State agency responsible for grade crossing safety and all affected railroads were provided an opportunity to participate in the diagnostic team review. The Notice shall also include a list of recommendations made by the diagnostic team.

(iv) A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (*i.e.*, 24 hours or from 10 p.m. until 7 a.m.)

(v) An accurate and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects the conditions existing at the crossing before any new SSMs or ASMs were implemented.

(vi) An accurate, complete and current Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects SSMs and ASMs in place upon establishment of the quiet zone. SSMs and ASMs that cannot be fully described on the Inventory Form shall be separately described.

(vii) If the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, the Notice of Quiet Zone Establishment shall contain a written statement affirming that the Notice of Intent was provided in accordance with paragraph (a)(1) of this section. This statement shall also state the date on which the Notice of Intent was mailed.

(viii) If the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, and the Notice of Intent was mailed less than 60 days before the mailing of the Notice of Quiet Zone Establishment, the Notice of Quiet Zone Establishment shall also contain a written statement affirming that written comments and/or ''no comment'' statements have been received from each railroad operating over public grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety in accordance with paragraph (b)(2)(ii) of this section.

(ix) If the public authority was required to provide a Notice of Detailed Plan in accordance with paragraph (a)(3) of this section, the Notice of Quiet Zone Establishment shall contain a statement affirming that the Notice of Detailed Plan was provided in accordance with paragraph (a)(3) of this section. This statement shall also state the date on which the Notice of Detailed Plan was mailed.

(x) The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

(xi) A list of the names and addresses of each party that shall be notified in accordance with paragraph (a)(4) of this section.

(xii) A statement signed by the chief executive officer of each public authority participating in the establishment of the quiet zone, in which the chief executive officer shall certify that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

§ 222.45 When is a railroad required to cease routine use of locomotive horns at crossings?

After notification from a public authority, pursuant to § 222.43(e) of this part, that a quiet zone is being established, a railroad shall cease routine use of the locomotive horn at all public and private highway-rail grade crossings identified by the public authority upon the date set by the public authority.

§ 222.47 What periodic updates are required?

(a) *Quiet zones with SSMs at each public crossing.* This paragraph addresses quiet zones established pursuant to §§ 222.39(a)(1), 222.41(a)(1)(i), and 222.41(b)(1)(i) (quiet zones with an SSM implemented at every public crossing within the quiet zone) of this part. Between 4½ and 5 years after the date of the quiet zone establishment notice provided by the public authority under § 222.43(e) of this part, and between 4½ and 5 years after the last affirmation under this section, the public authority must:

(1) Affirm in writing to the Associate Administrator that the SSMs

implemented within the quiet zone continue to conform to the requirements of appendix A of this part. Copies of such affirmation must be provided by certified mail, return receipt requested, to the parties identified in § 222.43(a)(4) of this part; and

(2) Provide to the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone.

(b) *Quiet zones which do not have a supplementary safety measure at each public crossing.* This paragraph addresses quiet zones established pursuant to §§ 222.39(a)(2) and (a)(3), § 222.39(b), §§ 222.41(a)(1)(ii), (a)(1)(iii), and (a)(1)(iv), and §§ 222.41(b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) (quiet zones which do not have an SSM at every public crossing within the quiet zone) of this part. Between 2½ and 3 years after the date of the quiet zone establishment notice provided by the public authority under § 222.43(e) of this part, and between 2½ and 3 years after the last affirmation under this section, the public authority must:

(1) Affirm in writing to the Associate Administrator that all SSMs and ASMs implemented within the quiet zone continue to conform to the requirements of Appendices A and B of this part or the terms of the Quiet Zone approval. Copies of such notification must be provided to the parties identified in § 222.43(a)(4) of this part by certified mail, return receipt requested; and

(2) Provide to the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone.

§ 222.49 Who may file Grade Crossing Inventory Forms?

(a) Grade Crossing Inventory Forms required to be filed with the Associate Administrator in accordance with §§ 222.39, 222.43 and 222.47 of this part may be filed by the public authority if, for any reason, such forms are not timely submitted by the State and railroad.

(b) Within 30 days after receipt of a written request of the public authority, the railroad owning the line of railroad that includes public or private highway rail grade crossings within the quiet zone or proposed quiet zone shall provide to the State and public authority sufficient current information regarding the grade crossing and the railroad's operations over the grade crossing to enable the State and public authority to complete the Grade Crossing Inventory Form.

§ 222.51 Under what conditions will quiet zone status be terminated?

(a) *New Quiet Zones—Annual risk review.* (1) FRA will annually calculate the Quiet Zone Risk Index for each quiet zone established pursuant to §§ 222.39(a)(2) and 222.39(b) of this part, and in comparison to the Nationwide Significant Risk Threshold. FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year. FRA will not conduct annual risk reviews for quiet zones established by having an SSM at every public crossing within the quiet zone or for quiet zones established by reducing the Quiet Zone Risk Index to the Risk Index With Horns.

(2) *Actions to be taken by public authority to retain quiet zone.* If the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, the quiet zone will terminate six months from the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, unless the public authority takes the following actions:

(i) Within six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone to a level at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to increase safety at the crossings within the quiet zone; and

(ii) Within three years after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or the Risk Index With Horns, and receive approval from the Associate Administrator, under the procedures set forth in § 222.39(b) of this part, for continuation of the quiet zone. If the Quiet Zone Risk Index is reduced to the Risk Index With Horns, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) of this part and subsequent annual risk reviews will not be conducted for that quiet zone.

(iii) Failure to comply with paragraph (a)(2)(i) of this section shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold. Failure to comply with paragraph (a)(2)(ii) of this section shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold.

(b) *Pre-Rule Quiet Zones—Annual risk review.* (1) FRA will annually calculate the Quiet Zone Risk Index for each Pre-Rule Quiet Zone and Pre-Rule Partial Quiet Zone that qualified for automatic approval pursuant to §§ 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(b)(1)(ii), and 222.41(b)(1)(iii) of this part. FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year. FRA will also notify each public authority if a relevant collision occurred at a grade crossing within the quiet zone during the preceding calendar year.

(2) *Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones authorized under §§ 222.41(a)(1)(ii) and 222.41(b)(1)(ii).* (i) If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone originally qualified for automatic approval because the Quiet Zone Risk Index was at, or below, the Nationwide Significant Risk Threshold, the quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by the FRA remains at, or below, the Nationwide Significant Risk Threshold.

(ii) If the Quiet Zone Risk Index as last calculated by FRA is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold and no relevant collisions have occurred at crossings within the quiet zone within the five years preceding the annual risk review, then the quiet zone may continue as though it originally received automatic approval pursuant to § 222.41(a)(1)(iii) or 222.41(b)(1)(iii) of this part.

(iii) If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold *and* a relevant collision occurred at a crossing within the quiet zone within the preceding five calendar years, the quiet zone will terminate six months after the date of receipt of notification from FRA of the Nationwide Significant Risk Threshold level, unless the public authority takes the actions

specified in paragraph (b)(4) of this section.

(3) *Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones authorized under §§ 222.41(a)(1)(iii) and 222.41(b)(1)(iii).* (i) If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone originally qualified for automatic approval because the Quiet Zone Risk Index was above the Nationwide Significant Risk Threshold, but below twice the Nationwide Significant Risk Threshold, and no relevant collisions had occurred within the five-year qualifying period, the quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by FRA remains below twice the Nationwide Significant Risk Threshold and no relevant collisions occurred at a public grade crossing within the quiet zone during the preceding calendar year.

(ii) If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if a relevant collision occurred at a public grade crossing within the quiet zone during the preceding calendar year, the quiet zone will terminate six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index is at, or exceeds twice the Nationwide Significant Risk Threshold or that a relevant collision occurred at a crossing within the quiet zone, unless the public authority takes the actions specified in paragraph (b)(4) of this section.

(4) *Actions to be taken by the public authority to retain a quiet zone.* (i) Within six months after the date of FRA notification, the public authority shall provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone by reducing the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to increase safety at the public crossings within the quiet zone; and

(ii) Within three years of the date of FRA notification, the public authority shall complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or the Risk Index With Horns, and receive approval from the Associate Administrator, under the procedures set forth in § 222.39(b) of this part, for continuation of the quiet zone. If the Quiet Zone Risk Index is reduced to a level that fully compensates for the absence of the train horn, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) of this part and subsequent annual risk reviews will not be conducted for that quiet zone.

(iii) Failure to comply with paragraph (b)(4)(i) of this section shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA. Failure to comply with paragraph (b)(4)(ii) of this section shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA.

(c) *Review at FRA's initiative.* (1) The Associate Administrator may, at any time, review the status of any quiet zone.

(2) If the Associate Administrator makes any of the following preliminary determinations, the Associate Administrator will provide written notice to the public authority, all railroads operating over public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety and will publish a notice of the determination in the **Federal Register:**

(i) Safety systems and measures implemented within the quiet zone do not fully compensate for the absence of the locomotive horn due to a substantial increase in risk;

(ii) Documentation relied upon to establish the quiet zone contains substantial errors that may have an adverse impact on public safety; or

(iii) Significant risk with respect to loss of life or serious personal injury exists within the quiet zone.

(3) After providing an opportunity for comment, the Associate Administrator may require that additional safety measures be taken or that the quiet zone be terminated. The Associate Administrator will provide a copy of his/her decision to the public authority and all parties listed in paragraph (c)(2) of this section. The public authority may appeal the Associate Administrator's decision in accordance with § 222.57(c) of this part. Nothing in this section is intended to limit the Administrator's emergency authority under 49 U.S.C. 20104 and 49 CFR part 211.

(d) *Termination by the public authority.* (1) Any public authority that participated in the establishment of a quiet zone under the provisions of this part may, at any time, withdraw its quiet zone status.

(2) A public authority may withdraw its quiet zone status by providing written notice of termination, by certified mail, return receipt requested, to all railroads operating the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator.

(3)(i) If the quiet zone that is being withdrawn was part of a multi-jurisdictional quiet zone, the remaining quiet zones may remain in effect, provided the public authorities responsible for the remaining quiet zones provide statements to the Associate Administrator certifying that the Quiet Zone Risk Index for each remaining quiet zone is at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns. These statements shall be provided, no later than six months after the date on which the notice of quiet zone termination was mailed, to all parties listed in paragraph (d)(2) of this section.

(ii) If any remaining quiet zone has a Quiet Zone Risk Index in excess of the Nationwide Significant Risk Threshold and the Risk Index With Horns, the public authority responsible for the quiet zone shall submit a written commitment, to all parties listed in paragraph (d)(2) of this section, to reduce the Quiet Zone Risk Index to a level at or below the Nationwide Significant Risk Threshold or the Risk Index With Horns within three years. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to reduce the Quiet Zone Risk Index. This commitment statement shall be provided to all parties listed in paragraph (d)(2) of this section no later than six months after the date on which the notice of quiet zone termination was mailed.

(iii) Failure to comply with paragraphs (d)(3)(i) and (d)(3)(ii) of this section shall result in the termination of the remaining quiet zone(s) six months after the date on which the notice of quiet zone termination was mailed by the withdrawing public authority in accordance with paragraph (d)(2) of this section.

(iv) Failure to complete implementation of SSMs and/or ASMs to reduce the Quiet Zone Risk Index to

a level at, or below, the Nationwide Significant Risk Index or the Risk Index With Horns, in accordance with the written commitment provided under paragraph (d)(3)(ii) of this section, shall result in the termination of quiet zone status three years after the date on which the written commitment was received by FRA.

(e) *Notification of termination.* (1) In the event that a quiet zone is terminated under the provisions of this section, it shall be the responsibility of the public authority to immediately provide written notification of the termination by certified mail, return receipt requested, to all railroads operating over public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator.

(2) Notwithstanding paragraph (e)(1) of this section, if a quiet zone is terminated under the provisions of this section, FRA shall also provide written notification to all parties listed in paragraph (e)(1) of this section.

(f) *Requirement to sound the locomotive horn.* Upon receipt of notification of quiet zone termination pursuant to paragraph (e) of this section, railroads shall, within seven days, and in accordance with the provisions of this part, sound the locomotive horn when approaching and passing through every public highway-rail grade crossing within the former quiet zone.

§ 222.53 What are the requirements for supplementary and alternative safety measures?

(a) Approved SSMs are listed in appendix A of this part. With the exception of permanent crossing closures, approved SSMs can qualify for quiet zone risk reduction credit in the manner specified in appendix A of this part.

(b) Additional ASMs that may be included in a request for FRA approval of a quiet zone under § 222.39(b) of this part are listed in appendix B of this part. Modified SSMs can qualify for quiet zone risk reduction credit in the manner specified in appendix B of this part.

(c) The following do not, individually or in combination, constitute SSMs or ASMs: Standard traffic control device arrangements such as reflectorized crossbucks, STOP signs, flashing lights, or flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals.

§ 222.55 How are new supplementary or alternative safety measures approved?

(a) The Associate Administrator may add new SSMs and standards to appendix A of this part and new ASMs and standards to appendix B of this part when the Associate Administrator determines that such measures or standards are an effective substitute for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings.

(b) Interested parties may apply for approval from the Associate Administrator to demonstrate proposed new SSMs or ASMs to determine whether they are effective substitutes for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings.

(c) The Associate Administrator may, after notice and opportunity for comment, order railroad carriers operating over a public highway-rail grade crossing or crossings to temporarily cease the sounding of locomotive horns at such crossings to demonstrate proposed new SSMs or ASMs, provided that such proposed new SSMs or ASMs have been subject to prior testing and evaluation. In issuing such order, the Associate Administrator may impose any conditions or limitations on such use of the proposed new SSMs or ASMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn.

(d) Upon completion of a demonstration of proposed new SSMs or ASMs, interested parties may apply to the Associate Administrator for their approval. Applications for approval shall be in writing and shall include the following:

(1) The name and address of the applicant;

(2) A description and design of the proposed new SSM or ASM;

(3) A description and results of the demonstration project in which the proposed SSMs or ASMs were tested;

(4) Estimated costs of the proposed new SSM or ASM; and

(5) Any other information deemed necessary.

(e) If the Associate Administrator is satisfied that the proposed safety measure fully compensates for the absence of the warning provided by the locomotive horn, the Associate Administrator will approve its use as an SSM to be used in the same manner as the measures listed in appendix A of this part, or the Associate Administrator may approve its use as an ASM to be used in the same manner as the measures listed in appendix B of this part. The Associate Administrator may impose any conditions or limitations on use of the SSMs or ASMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn.

(f) If the Associate Administrator approves a new SSM or ASM, the Associate Administrator will: notify the applicant, if any; publish notice of such action in the **Federal Register**; and add the measure to the list of approved SSMs or ASMs.

(g) A public authority or other interested party may appeal to the Administrator from a decision by the Associate Administrator granting or denying an application for approval of a proposed SSM or ASM, or the conditions or limitations imposed on its use, in accordance with § 222.57 of this part.

§ 222.57 Can parties seek review of the Associate Administrator's actions?

(a) A public authority or other interested party may petition the Administrator for review of any decision by the Associate Administrator granting or denying an application for approval of a new SSM or ASM under § 222.55 of this part. The petition must be filed within 60 days of the decision to be reviewed, specify the grounds for the requested relief, and be served upon the following parties: all railroads ordered to temporarily cease sounding of the locomotive horn over public highway-rail grade crossings for the demonstration of the proposed new SSM or ASM, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings affected by the new SSM/ASM demonstration, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. Unless the Administrator specifically provides otherwise, and gives notice to the petitioner or publishes a notice in the **Federal Register**, the filing of a petition under this paragraph does not stay the effectiveness of the action sought to be reviewed. The Administrator may reaffirm, modify, or revoke the decision of the Associate Administrator without further proceedings and shall notify the petitioner and other interested parties in writing or by publishing a notice in the **Federal Register**.

(b) A public authority may request reconsideration of a decision by the Associate Administrator to deny an

application by that authority for approval of a quiet zone, or to require additional safety measures, by filing a petition for reconsideration with the Associate Administrator. The petition must specify the grounds for asserting that the Associate Administrator improperly exercised his/her judgment in finding that the proposed SSMs and ASMs would not result in a Quiet Zone Risk Index that would be at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold. The petition shall be filed within 60 days of the date of the decision to be reconsidered and be served upon all parties listed in § 222.39(b)(3) of this part. Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and to request an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision on the petition that will be administratively final.

(c) A public authority may request reconsideration of a decision by the Associate Administrator to terminate quiet zone status by filing a petition for reconsideration with the Associate Administrator. The petition must be filed within 60 days of the date of the decision, specify the grounds for the requested relief, and be served upon all parties listed in § 222.51(c)(2) of this part. Unless the Associate Administrator publishes a notice in the **Federal Register** that specifically stays the effectiveness of his/her decision, the filing of a petition under this paragraph will not stay the termination of quiet zone status. Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and to request an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision on the petition that will be administratively final. A copy of this decision shall be served upon all parties listed in § 222.51(c)(2) of this part.

(d) A railroad may request reconsideration of a decision by the Associate Administrator to approve an application for approval of a proposed quiet zone under § 222.39(b) of this part by filing a petition for reconsideration with the Associate Administrator. The petition must specify the grounds for asserting that the Associate Administrator improperly exercised his/her judgment in finding that the proposed SSMs and ASMs would result in a Quiet Zone Risk Index that would be at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold. The petition shall be filed within 60 days of the date of the decision to be reconsidered, and be served upon all parties listed in § 222.39(b)(3) of this part. Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and to request an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision that will be administratively final.

§ 222.59 When may a wayside horn be used?

(a)(1) A wayside horn conforming to the requirements of appendix E of this part may be used in lieu of a locomotive horn at any highway-rail grade crossing equipped with an active warning system consisting of, at a minimum, flashing lights and gates.

(2) A wayside horn conforming to the requirements of appendix E of this part may be installed within a quiet zone. For purposes of calculating the length of a quiet zone, the presence of a wayside horn at a highway-grade crossing within a quiet zone shall be considered in the same manner as a grade crossing treated with an SSM. A grade crossing equipped with a wayside horn shall not be considered in calculating the Quiet Zone Risk Index or Crossing Corridor Risk Index.

(b) A public authority installing a wayside horn at a grade crossing within a quiet zone shall provide written notice that a wayside horn is being installed to all railroads operating over the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. This notice shall provide the date on which the wayside horn will be operational and identify the grade crossing at which the wayside horn shall be installed by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. The railroad or public authority shall provide notification of the operational date at least 21 days in advance.

(c) A railroad or public authority installing a wayside horn at a grade crossing located outside a quiet zone shall provide written notice that a wayside horn is being installed to all railroads operating over the public highway-rail grade crossing, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossing, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. This notice shall provide the date on which the wayside horn will be operational and identify the grade crossing at which the wayside horn shall be installed by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. The railroad or public authority shall provide notification of the operational date at least 21 days in advance.

(d) A railroad operating over a grade crossing equipped with an operational wayside horn installed within a quiet zone pursuant to this section shall cease routine locomotive horn use at the grade crossing. A railroad operating over a grade crossing that is equipped with a wayside horn and located outside of a quiet zone shall cease routine locomotive horn use at the grade crossing on the operational date specified in the notice required by paragraph (c) of this section.

Appendix A to Part 222—Approved Supplementary Safety Measures

A. Requirements and Effectiveness Rates for Supplementary Safety Measures

This section provides a list of approved supplementary safety measures (SSMs) that may be installed at highway-rail grade crossings within quiet zones for risk reduction credit. Each SSM has been assigned an effectiveness rate, which may be subject to adjustment as research and demonstration projects are completed and data is gathered and refined. Sections B and C govern the process through which risk reduction credit for pre-existing SSMs can be determined.

1. *Temporary Closure of a Public Highway-Rail Grade Crossing:* Close the crossing to highway traffic during designated quiet periods. (This SSM can only be implemented within Partial Quiet Zones.)

Effectiveness: 1.0.

Because an effective closure system prevents vehicle entrance onto the crossing, the probability of a collision with a train at the crossing is zero during the period the crossing is closed. Effectiveness would therefore equal 1. However, analysis should take into consideration that traffic would need to be redistributed among adjacent crossings or grade separations for the purpose of estimating risk following the silencing of train horns, unless the particular ''closure'' was accomplished by a grade separation.

Required:

a. The closure system must completely block highway traffic on all approach lanes to the crossing.

b. The closure system must completely block adjacent pedestrian crossings.

c. Public highway-rail grade crossings located within New Partial Quiet Zones shall be closed from 10 p.m. until 7 a.m. every day. Public highway-rail grade crossings located within Pre-Rule Partial Quiet Zones may only be closed during one period each 24 hours.

d. Barricades and signs used for closure of the roadway shall conform to the standards contained in the MUTCD.

e. Daily activation and deactivation of the system is the responsibility of the public authority responsible for maintenance of the street or highway crossing the railroad tracks. The public authority may provide for third party activation and deactivation; however, the public authority shall remain fully responsible for compliance with the requirements of this part.

f. The system must be tamper and vandal resistant to the same extent as other traffic control devices.

g. The closure system shall be equipped with a monitoring device that contains an indicator which is visible to the train crew prior to entering the crossing. The indicator shall illuminate whenever the closure device is deployed.

Recommended:

Signs for alternate highway traffic routes should be erected in accordance with MUTCD and State and local standards and should inform pedestrians and motorists that the streets are closed, the period for which they are closed, and that alternate routes must be used.

2. *Four-Quadrant Gate System:* Install gates at a crossing sufficient to fully block highway traffic from entering the crossing when the gates are lowered, including at least one gate for each direction of traffic on each approach.

Effectiveness:

Four-quadrant gates only, no presence detection: .82.

Four-quadrant gates only, with presence detection: .77.

Four-quadrant gates with traffic channelization of at least 60 feet, (with or without presence detection): .92.

Required:

Four-quadrant gate systems shall conform to the standards for four-quadrant gates contained in the MUTCD and shall, in addition, comply with the following:

a. When a train is approaching, all highway approach and exit lanes on both sides of the highway-rail crossing must be spanned by gates, thus denying to the highway user the option of circumventing the conventional approach lane gates by switching into the opposing (oncoming) traffic lane in order to enter the crossing and cross the tracks.

b. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

c. Crossing warning systems must be equipped with power-out indicators.

Note: Requirements b and c apply only to New Quiet Zones or New Partial Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones. However, if existing automatic warning device systems in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones are renewed, or new automatic warning device systems are installed, power-out indicators and constant warning time devices are required, unless existing conditions at the crossing would prevent the proper operation of the constant warning devices.

d. The gap between the ends of the entrance and exit gates (on the same side of the railroad tracks) when both are in the fully lowered, or down, position must be less than two feet if no median is present. If the highway approach is equipped with a median or a channelization device between the approach and exit lanes, the lowered gates must reach to within one foot of the median or channelization device, measured horizontally across the road from the end of the lowered gate to the median or channelization device or to a point over the edge of the median or channelization device. The gate and the median top or channelization device do not have to be at the same elevation.

e. ''Break-away'' channelization devices must be frequently monitored to replace broken elements.

Recommendations for new installations only:

f. Gate timing should be established by a qualified traffic engineer based on site specific determinations. Such determination should consider the need for and timing of a delay in the descent of the exit gates (following descent of the conventional entrance gates). Factors to be considered may include available storage space between the gates that is outside the fouling limits of the track(s) and the possibility that traffic flows may be interrupted as a result of nearby intersections.

g. A determination should be made as to whether it is necessary to provide vehicle presence detectors (VPDs) to open or keep open the exit gates until all vehicles are clear of the crossing. VPDs should be installed on one or both sides of the crossing and/or in the surface between the rails closest to the field. Among the factors that should be considered are the presence of intersecting roadways near the crossing, the priority that the traffic crossing the railroad is given at such intersections, the types of traffic control devices at those intersections, and the presence and timing of traffic signal preemption.

h. Highway approaches on one or both sides of the highway-rail crossing may be provided with medians or channelization devices between the opposing lanes. Medians should be defined by a non-traversable curb or traversable curb, or by reflectorized channelization devices, or by both.

i. Remote monitoring (in addition to power-out indicators, which are required) of the status of these crossing systems is preferable. This is especially important in those areas in which qualified railroad signal department personnel are not readily available.

3. *Gates With Medians or Channelization Devices:* Install medians or channelization devices on both highway approaches to a public highway-rail grade crossing denying to the highway user the option of circumventing the approach lane gates by switching into the opposing (oncoming) traffic lane and driving around the lowered gates to cross the tracks.

Effectiveness:

channelization devices—.75.

non-traversable curbs with or without channelization devices—.80.

Required:

a. Opposing traffic lanes on both highway approaches to the crossing must be separated by either: (1) medians bounded by non-traversable curbs or (2) channelization devices.

b. Medians or channelization devices must extend at least 100 feet from the gate arm, or if there is an intersection within 100 feet of the gate, the median or channelization device must extend at least 60 feet from the gate arm.

c. Intersections of two or more streets, or a street and an alley, that are within 60 feet of the gate arm must be closed or relocated. Driveways for private, residential properties (up to four units) within 60 feet of the gate arm are not considered to be intersections under this part and need not be closed. However, consideration should be given to taking steps to ensure that motorists exiting the driveways are not able to move against the flow of traffic to circumvent the purpose of the median and drive around lowered gates. This may be accomplished by the posting of ''no left turn'' signs or other means of notification. For the purpose of this part, driveways accessing commercial properties are considered to be intersections and are not allowed. It should be noted that if a public authority can not comply with the 60 feet or 100 feet requirement, it may apply to FRA for a quiet zone under § 222.39(b), ''Public authority application to FRA.'' Such arrangement may qualify for a risk reduction credit in calculation of the Quiet Zone Risk Index. Similarly, if a public authority finds that it is feasible to only provide channelization on one approach to the crossing, it may also apply to FRA for approval under § 222.39(b). Such an arrangement may also qualify for a risk reduction credit in calculation of the Quiet Zone Risk Index.

d. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

e. Crossing warning systems must be equipped with power-out indicators. Note: Requirements d and e apply only to New Quiet Zones and New Partial Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones. However, if existing automatic warning device systems in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones are renewed, or new automatic warning device systems are installed, power-out indicators and constant warning time devices are required, unless existing conditions at the crossing would prevent the proper operation of the constant warning devices.

f. The gap between the lowered gate and the curb or channelization device must be one foot or less, measured horizontally across the road from the end of the lowered gate to the curb or channelization device or to a point over the curb edge or channelization device. The gate and the curb top or channelization device do not have to be at the same elevation.

g. ''Break-away'' channelization devices must be frequently monitored to replace broken elements.

4. *One Way Street with Gate(s):* Gate(s) must be installed such that all approaching highway lanes to the public highway-rail grade crossing are completely blocked.

Effectiveness: .82.

Required:

a. Gate arms on the approach side of the crossing should extend across the road to within one foot of the far edge of the pavement. If a gate is used on each side of the road, the gap between the ends of the gates when both are in the lowered, or down, position must be no more than two feet.

b. If only one gate is used, the edge of the road opposite the gate mechanism must be configured with a non-traversable curb extending at least 100 feet.

c. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

d. Crossing warning systems must be equipped with power-out indicators.

Note: Requirements c and d apply only to New Quiet Zones and New Partial Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones. If automatic warning systems are, however, installed or renewed in a Pre-Rule Quiet or Pre-Rule Partial Quiet Zone, power-out indicators and constant warning time devices shall be installed, unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

5. *Permanent Closure of a Public Highway-Rail Grade Crossing:* Permanently close the crossing to highway traffic.

Effectiveness: 1.0.

Required:

a. The closure system must completely block highway traffic from entering the grade crossing.

b. Barricades and signs used for closure of the roadway shall conform to the standards contained in the MUTCD.

c. The closure system must be tamper and vandal resistant to the same extent as other traffic control devices.

d. Since traffic will be redistributed among adjacent crossings, the traffic counts for adjacent crossings shall be increased to reflect the diversion of traffic from the closed crossing.

B. Credit for Pre-Existing SSMs in New Quiet Zones and New Partial Quiet Zones

A community that has implemented a pre-existing SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a qualifying, pre-existing SSM. (See appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the SSM effectiveness rate. (For example, the risk index for a crossing equipped with pre-existing channelization devices would be divided by .25.)

3. Add the current risk indices for the other public grade crossings located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the proposed quiet zone.

C. Credit for Pre-Existing SSMs in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones

A community that has implemented a pre-existing SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a qualifying, pre-existing SSM. (*See* appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Reduce the current risk index for the grade crossing to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at the crossing. The following list sets forth the estimated risk reduction for certain types of crossings:

a. Risk indices for passive crossings shall be reduced by 43%;

b. Risk indices for grade crossings equipped with automatic flashing lights shall be reduced by 27%; and

c. Risk indices for gated crossings shall be reduced by 40%.

3. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the SSM effectiveness rate. (For example, the risk index for a crossing equipped with pre-existing channelization devices would be divided by .25.)

4. Adjust the risk indices for the other crossings that are included in the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone by reducing the current risk index to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at each crossing. Please refer to step two for the list of approved risk reduction percentages by crossing type.

5. Add the new risk indices for each crossing located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the quiet zone.

Appendix B to Part 222—Alternative Safety Measures

Introduction

A public authority seeking approval of a quiet zone under public authority application to FRA (§ 222.39(b)) may include ASMs listed in this appendix in its proposal. This appendix addresses three types of ASMs: Modified SSMs, Non-Engineering ASMs, and Engineering ASMs. Modified SSMs are SSMs that do not fully comply with the provisions listed in appendix A. As provided in section I.B. of this appendix, public authorities can obtain risk reduction credit for pre-existing modified SSMs under the final rule. Non-engineering ASMs consist of programmed enforcement, public education and awareness, and photo enforcement programs that may be used to reduce risk within a quiet zone. Engineering ASMs consist of engineering improvements that address underlying geometric conditions, including sight distance, that are the source of increased risk at crossings.

I. Modified SSMs

A. Requirements and Effectiveness Rates for Modified SSMs

1. If there are unique circumstances pertaining to a specific crossing or number of crossings which prevent SSMs from being fully compliant with all of the SSM requirements listed in appendix A, those SSM requirements may be adjusted or revised. In that case, the SSM, as modified by the pubic authority, will be treated as an ASM under this appendix B, and not as a SSM under appendix A. FRA will review the safety effects of the modified SSMs and the proposed quiet zone, and will approve the proposal if it finds that the Quiet Zone Risk Index is reduced to the level that would be expected with the sounding of the train horns or to a level at, or below the Nationwide Significant Risk Threshold, whichever is greater.

2. A public authority may provide estimates of effectiveness based upon adjustments from the effectiveness levels provided in appendix A or from actual field data derived from the crossing sites. The specific crossing and applied mitigation measure will be assessed to determine the effectiveness of the modified SSM. FRA will continue to develop and make available effectiveness estimates and data from experience under the final rule.

3. If one or more of the requirements associated with an SSM as listed in appendix A is revised or deleted, data or analysis supporting the revision or deletion must be provided to FRA for review. The following engineering types of ASMs may be included in a proposal for approval by FRA for creation of a quiet zone: (1) Temporary Closure of a Public Highway-Rail Grade Crossing, (2) Four-Quadrant Gate System, (3) Gates With Medians or Channelization Devices, and (4) One-Way Street With Gate(s).

B. Credit for Pre-Existing Modified SSMs in New Quiet Zones and New Partial Quiet Zones

A community that has implemented a pre-existing modified SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a pre-

existing modified SSM. (See appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Obtain FRA approval of the estimated effectiveness rate for the pre-existing modified SSM. Estimated effectiveness rates may be based upon adjustments from the SSM effectiveness rates provided in appendix A or actual field data derived from crossing sites.

3. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing modified SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the FRA-approved modified SSM effectiveness rate.

4. Add the current risk indices for the other public grade crossings located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the proposed quiet zone.

C. Credit for Pre-Existing Modified SSMs in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones

A community that has implemented a pre-existing modified SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a pre-existing modified SSM. (*See* appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Reduce the current risk index for the grade crossing to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at the crossing. The following list sets forth the estimated risk reduction for certain types of crossings:

a. Risk indices for passive crossings shall be reduced by 43%;

b. Risk indices for grade crossings equipped with automatic flashing lights shall be reduced by 27%; and

c. Risk indices for gated crossings shall be reduced by 40%.

3. Obtain FRA approval of the estimated effectiveness rate for the pre-existing modified SSM. Estimated effectiveness rates may be based upon adjustments from the SSM effectiveness rates provided in appendix A or actual field data derived from crossing sites.

4. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing modified SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the FRA-approved modified SSM effectiveness rate.

5. Adjust the risk indices for the other crossings that are included in the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone by reducing the current risk index to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at each crossing. Please refer to step two for the list of approved risk reduction percentages by crossing type.

6. Add the new risk indices for each crossing located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the quiet zone.

II. Non-engineering ASMs

A. The following non-engineering ASMs may be used in the creation of a Quiet Zone: (The method for determining the effectiveness of the non-engineering ASMs, the implementation of the quiet zone, subsequent monitoring requirements, and dealing with an unacceptable effectiveness rate is provided in paragraph B.)

1. *Programmed Enforcement:* Community and law enforcement officials commit to a systematic and measurable crossing monitoring and traffic law enforcement program at the public highway-rail grade crossing, alone or in combination with the Public Education and Awareness ASM.

Required:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

b. A law enforcement effort must be defined, established and continued along with continual or regular monitoring that provides a statistically valid violation rate that indicates the effectiveness of the law enforcement effort.

c. The public authority shall retain records pertaining to monitoring and sampling efforts at the grade crossing for a period of not less than five years. These records shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

2. *Public Education and Awareness:* Conduct, alone or in combination with programmed law enforcement, a program of public education and awareness directed at motor vehicle drivers, pedestrians and residents near the railroad to emphasize the risks associated with public highway-rail grade crossings and applicable requirements of state and local traffic laws at those crossings.

Requirements:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

b. A sustainable public education and awareness program must be defined, established and continued along with continual or regular monitoring that provides a statistically valid violation rate that indicates the effectiveness of the public education and awareness effort. This program shall be provided and supported primarily through local resources.

c. The public authority shall retain records pertaining to monitoring and sampling efforts at the grade crossing for a period of not less than five years. These records shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

3. *Photo Enforcement:* This ASM entails automated means of gathering valid photographic or video evidence of traffic law violations at a public highway-rail grade crossing together with follow-through by law enforcement and the judiciary.

Requirements:

a. State law authorizing use of photographic or video evidence both to bring charges and sustain the burden of proof that a violation of traffic laws concerning public highway-rail grade crossings has occurred, accompanied by commitment of administrative, law enforcement and judicial officers to enforce the law;

b. Sanction includes sufficient minimum fine (*e.g.*, $100 for a first offense, ''points'' toward license suspension or revocation) to deter violations;

c. Means to reliably detect violations (*e.g.*, loop detectors, video imaging technology);

d. Photographic or video equipment deployed to capture images sufficient to document the violation (including the face of the driver, if required to charge or convict under state law).

Note: This does not require that each crossing be continually monitored. The objective of this option is deterrence, which may be accomplished by moving photo/video equipment among several crossing locations, as long as the motorist perceives the strong possibility that a violation will lead to sanctions. Each location must appear identical to the motorist, whether or not surveillance equipment is actually placed there at the particular time. Surveillance equipment should be in place and operating at each crossing at least 25 percent of each calendar quarter.

e. Appropriate integration, testing and maintenance of the system to provide evidence supporting enforcement;

f. Public awareness efforts designed to reinforce photo enforcement and alert motorists to the absence of train horns;

g. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

h. A law enforcement effort must be defined, established and continued along with continual or regular monitoring.

i. The public authority shall retain records pertaining to monitoring and sampling efforts at the grade crossing for a period of not less than five years. These records shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

B. The effectiveness of an ASM will be determined as follows:

1. Establish the quarterly (three months) baseline violation rates for each crossing in the proposed quiet zone.

a. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered.

b. Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (*e.g.,* inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating.

c. If data is not collected continuously during the quarter, sufficient detail must be

provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods.

d. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: Sampling on certain days of the week but not others; sampling during certain times of the day but not others; sampling immediately after implementation of an ASM while the public is still going through an adjustment period; or applying one sample method for the baseline rate and another for the new rate.

e. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods.

f. All subsequent quarterly violation rate calculations must use the same methodology as stated in this paragraph unless FRA authorizes another methodology.

2. The ASM should then be initiated for each crossing. Train horns are still being sounded during this time period.

3. In the calendar quarter following initiation of the ASM, determine a new quarterly violation rate using the same methodology as in paragraph (1) above.

4. Determine the violation rate reduction for each crossing by the following formula:

Violation rate reduction = (new rate − baseline rate)/baseline rate

5. Determined the effectiveness rate of the ASM for each crossing by multiplying the violation rate reduction by .78.

6. Using the effectiveness rates for each grade crossing treated by an ASM, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed quiet zone has been reduced to a level at, or below, the Risk Index With Horns or the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the proposed quiet zone. Upon receiving written approval of the quiet zone application from FRA, the public authority may then proceed with notifications and implementation of the quiet zone.

7. Violation rates must be monitored for the next two calendar quarters and every second quarter thereafter. If, after five years from the implementation of the quiet zone, the violation rate for any quarter has never exceeded the violation rate that was used to determine the effectiveness rate that was approved by FRA, violation rates may be monitored for one quarter per year.

8. In the event that the violation rate is ever greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for another quarter. If, in the second quarter the violation rate is still greater than the rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index indicates that the ASM no longer fully compensates for the lack of a train horn, or that the risk level is equal to, or exceeds the National Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

III. Engineering ASMs

A. Engineering improvements, other than modified SSMs, may be used in the creation of a Quiet Zone. These engineering improvements, which will be treated as ASMs under this appendix, may include improvements that address underlying geometric conditions, including sight distance, that are the source of increased risk at the crossing.

B. The effectiveness of an Engineering ASM will be determined as follows:

1. Establish the quarterly (three months) baseline violation rate for the crossing at which the Engineering ASM will be applied.

a. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered.

b. Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (*e.g.,* inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating.

c. If data is not collected continuously during the quarter, sufficient detail must be provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods.

d. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: sampling on certain days of the week but not others; sampling during certain times of the day but not others; sampling immediately after implementation of an ASM while the public is still going through an adjustment period; or applying one sample method for the baseline rate and another for the new rate.

e. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods.

f. All subsequent quarterly violation rate calculations must use the same methodology as stated in this paragraph unless FRA authorizes another methodology.

2. The Engineering ASM should be initiated at the crossing. Train horns are still being sounded during this time period.

3. In the calendar quarter following initiation of the Engineering ASM, determine a new quarterly violation rate using the same methodology as in paragraph (1) above.

4. Determine the violation rate reduction for the crossing by the following formula:

Violation rate reduction = (new rate − baseline rate)/baseline rate

5. Using the Engineering ASM effectiveness rate, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed quiet zone has been reduced to a risk level at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the quiet zone. Upon receiving written approval of the quiet zone application from FRA, the public authority may then proceed with notifications and implementation of the quiet zone.

6. Violation rates must be monitored for the next two calendar quarters. Unless otherwise provided in FRA's notification of quiet zone approval, if the violation rate for these two calendar quarters does not exceed the violation rate that was used to determine the effectiveness rate that was approved by FRA, the public authority can cease violation rate monitoring.

7. In the event that the violation rate over either of the next two calendar quarters are greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for a third calendar quarter. However, if the third calendar quarter violation rate is also greater than the rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index exceeds the Risk Index With Horns and the Nationwide Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

Appendix C to Part 222—Guide To Establishing Quiet Zones

Introduction

This Guide to Establishing Quiet Zones (Guide) is divided into five sections in order to address the variety of methods and conditions that affect the establishment of quiet zones under this rule.

Section I of the Guide provides an overview of the different ways in which a quiet zone may be established under this rule. This includes a brief discussion on the safety thresholds that must be attained in order for train horns to be silenced and the relative merits of each. It also includes the two general methods that may be used to reduce risk in the proposed quiet zone, and the different impacts that the methods have on the quiet zone implementation process. This section also discusses Partial (*e.g.* night time only quiet zones) and Intermediate Quiet Zones. An Intermediate Quiet Zone is one where horn restrictions were in place after October 9, 1996, but as of December 18, 2003.

Section II of the Guide provides information on establishing New Quiet Zones. A New Quiet Zone is one at which train horns are currently being sounded at crossings. The Public Authority Designation and Public Authority Application to FRA methods will be discussed in depth.

Section III of the Guide provides information on establishing Pre-Rule Quiet Zones. A Pre-Rule Quiet Zone is one where train horns were not routinely sounded as of October 9, 1996 and December 18, 2003. The differences between New and Pre-Rule Quiet Zones will be explained. Public Authority Designation and Public Authority Application to FRA methods also apply to Pre-Rule Quiet Zones.

Section IV of the Guide deals with the required notifications that must be provided by public authorities when establishing both New and continuing Pre-Rule or Intermediate Quiet Zones.

Section V of the Guide provides examples of quiet zone implementation.

Section I—Overview

In order for a quiet zone to be qualified under this rule, it must be shown that the lack of the train horn does not present a significant risk with respect to loss of life or serious personal injury, or that the significant risk has been compensated for by other means. The rule provides four basic ways in which a quiet zone may be established. Creation of both New Quiet Zones and Pre-Rule Quiet Zones are based on the same general guidelines; however, there are a number of differences that will be noted in the discussion on Pre-Rule Quiet Zones.

A. Qualifying Conditions

(1) One of the following four conditions or scenarios must be met in order to show that the lack of the train horn does not present a significant risk, or that the significant risk has been compensated for by other means:

a. One or more SSMs as identified in appendix A are installed at *each* public crossing in the quiet zone; or

b. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold without implementation of additional safety measures at any crossings in the quiet zone; or

c. Additional safety measures are implemented at selected crossings resulting in the Quiet Zone Risk Index being reduced to a level equal to, or less than, the Nationwide Significant Risk Threshold; or

d. Additional safety measures are taken at selected crossings resulting in the Quiet Zone Risk Index being reduced to at least the level of the Risk Index With Horns (that is, the risk that would exist if train horns were sounded at every public crossing in the quiet zone).

(2) It is important to consider the implications of each approach before deciding which one to use. If a quiet zone is qualified based on reference to the Nationwide Significant Risk Threshold (*i.e.,* the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold—see the second and third scenarios above), then an annual review will be done by FRA to determine if the Quiet Zone Risk Index remains equal to, or less than, the Nationwide Significant Risk Threshold. Since the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index may change from year to year, there is no guarantee that the quiet zone will remain qualified. The circumstances that cause the disqualification may not be subject to the control of the public authority. For example, an overall national improvement in safety at gated crossings may cause the Nationwide Significant Risk Threshold to fall. This may cause the Quiet Zone Risk Index to become greater than the Nationwide Significant Risk Threshold. If the quiet zone is no longer qualified, then the public authority will have to take additional measures, and may incur additional costs that might not have been budgeted, to once again lower the Quiet Zone Risk Index to at least the Nationwide Significant Risk Threshold in order to retain the quiet zone. Therefore, while the initial cost to implement a quiet zone under the second or third scenario may be lower than the other options, these scenarios also carry a degree of uncertainty about the quiet zone's continued existence.

(3) The use of the first or fourth scenarios reduces the risk level to at least the level that would exist if train horns were sounding in the quiet zone. These methods may have higher initial costs because more safety measures may be necessary in order to achieve the needed risk reduction. Despite the possibility of greater initial costs, there are several benefits to these methods. The installation of SSMs at every crossing will provide the greatest safety benefit of any of the methods that may be used to initiate a quiet zone. With both of these methods (first and fourth scenarios), the public authority will never need to be concerned about the Nationwide Significant Risk Threshold, annual reviews of the Quiet Zone Risk Index, or failing to be qualified because the Quiet Zone Risk Index is higher than the Nationwide Significant Risk Threshold. Public authorities are strongly encouraged to carefully consider both the pros and cons of all of the methods and to choose the method that will best meet the needs of its citizens by providing a safer and quieter community.

(4) For the purposes of this Guide, the term ''Risk Index with Horns'' is used to represent the level of risk that would exist if train horns were sounded at every public crossing in the proposed quiet zone. If a public authority decides that it would like to fully compensate for the lack of a train horn and not install SSMs at each public crossing in the quiet zone, it must reduce the Quiet Zone Risk Index to a level that is equal to, or less than, the Risk Index with Horns. The Risk Index with Horns is similar to the Nationwide Significant Risk Threshold in that both are targets that must be reached in order to establish a quiet zone under the rule. Quiet zones that are established by reducing the Quiet Zone Risk Index to at least the level of the Nationwide Significant Risk Threshold will be reviewed annually by FRA to determine if they still qualify under the rule to retain the quiet zone. Quiet zones that are established by reducing the Quiet Zone Risk Index to at least the level of the Risk Index with Horns will not be subject to annual reviews.

(5) The use of FRA's web-based Quiet Zone Calculator is recommended to aid in the decision making process (*http://www.fra.dot.gov/us/content/1337*). The Quiet Zone Calculator will allow the public authority to consider a variety of options in determining which SSMs make the most sense. It will also perform the necessary calculations used to determine the existing risk level and whether enough risk has been mitigated in order to create a quiet zone under this rule.

B. Risk Reduction Methods

FRA has established two general methods to reduce risk in order to have a quiet zone qualify under this rule. The method chosen impacts the manner in which the quiet zone is implemented.

1. *Public Authority Designation (SSMs)*—The Public Authority Designation method (§ 222.39(a)) involves the use of SSMs (*see* appendix A) at some or all crossings within the quiet zone. The use of only SSMs to reduce risk will allow a public authority to designate a quiet zone without approval from FRA. If the public authority installs SSMs at every crossing within the quiet zone, it need not demonstrate that they will reduce the risk sufficiently in order to qualify under the rule since FRA has already assessed the ability of the SSMs to reduce risk. In other words, the Quiet Zone Calculator does not need to be used. However, if only SSMs are installed within the quiet zone, but not at every crossing, the public authority must calculate that sufficient risk reduction will be accomplished by the SSMs. Once the improvements are made, the public authority must make the required notifications (which includes a copy of the report generated by the Quiet Zone Calculator showing that the risk in the quiet zone has been sufficiently reduced), and the quiet zone may be implemented. FRA does not need to approve the plan as it has already assessed the ability of the SSMs to reduce risk.

2. *Public Authority Application to FRA (ASMs)*—The Public Authority Application to FRA method (§ 222.39(b)) involves the use ASMs (*see* appendix B). ASMs include modified SSMs that do not fully comply with the provisions found in appendix A (*e.g.,* shorter than required traffic channelization devices), non-engineering ASMs (*e.g.*, programmed law enforcement), and engineering ASMs (*i.e*, engineering improvements other than modified SSMs). If the use of ASMs (or a combination of ASMs and SSMs) is elected to reduce risk, then the public authority must apply to FRA for approval of the quiet zone. The application must contain sufficient data and analysis to confirm that the proposed ASMs do indeed provide the necessary risk reduction. FRA will review the application and will issue a formal approval if it determines that risk is reduced to a level that is necessary in order to comply with the rule. Once FRA approval has been received and the safety measures fully implemented, the public authority would then proceed to make the necessary notifications, and the quiet zone may be implemented. The use of non-engineering ASMs will require continued monitoring and analysis throughout the existence of the quiet zone to ensure that risk continues to be reduced.

3. *Calculating Risk Reduction*—The following should be noted when calculating risk reductions in association with the establishment of a quiet zone. This information pertains to both New Quiet

Zones and Pre-Rule Quiet Zones and to the Public Authority Designation and Public Authority Application to FRA methods.

Crossing closures: If any public crossing within the quiet zone is proposed to be closed, include that crossing when calculating the Risk Index with Horns. The effectiveness of a closure is 1.0. However, be sure to increase the traffic counts at other crossings within the quiet zone and recalculate the risk indices for those crossings that will handle the traffic diverted from the closed crossing. It should be noted that crossing closures that are already in existence are not considered in the risk calculations.

Example— A proposed New Quiet Zone contains four crossings: A, B, C and D streets. A, B and D streets are equipped with flashing lights and gates. C Street is a passive crossbuck crossing with a traffic count of 400 vehicles per day. It is decided that C Street will be closed as part of the project. Compute the risk indices for all four streets. The calculation for C Street will utilize flashing lights and gates as the warning device. Calculate the Crossing Corridor Risk Index by averaging the risk indices for all four of the crossings. This value will also be the Risk Index with Horns since train horns are currently being sounded. To calculate the Quiet Zone Risk Index, first re-calculate the risk indices for B and D streets by increasing the traffic count for each crossing by 200. (Assume for this example that the public authority decided that the traffic from C Street would be equally divided between B and D streets.) Increase the risk indices for A, B and D streets by 66.8% and divide the sum of the three remaining crossings by four. This is the initial Quiet Zone Risk Index and accounts for the risk reduction caused by closing C Street.

Grade Separation: Grade separated crossings that were in existence before the creation of a quiet zone are not included in any of the calculations. However, any public crossings within the quiet zone that are proposed to be treated by grade separation should be treated in the same manner as crossing closures. Highway traffic that may be diverted from other crossings within the quiet zone to the new grade separated crossing should be considered when computing the Quiet Zone Risk Index.

Example— A proposed New Quiet Zone contains four crossings: A, B, C and D streets. All streets are equipped with flashing lights and gates. C Street is a busy crossing with a traffic count of 25,000 vehicles per day. It is decided that C Street will be grade separated as part of the project and the existing at-grade crossing closed. Compute the risk indices for all four streets. Calculate the Crossing Corridor Risk Index, which will also be the Risk Index with Horns, by averaging the risk indices for all four of the crossings. To calculate the Quiet Zone Risk Index, first re-calculate the risk indices for B and D streets by decreasing the traffic count for each crossing by 1,200. (The public authority decided that 2,400 motorists will decide to use the grade separation at C Street in order to avoid possible delays caused by passing trains.) Increase the risk indices for A, B and D streets by 66.8% and divide the sum of the three remaining crossings by four. This is the initial Quiet Zone Risk Index and accounts for the risk reduction caused by the grade separation at C Street.

Pre-Existing SSMs: Risk reduction credit may be taken by a public authority for a SSM that was previously implemented and is currently in place in the quiet zone. If an existing improvement meets the criteria for a SSM as provided in appendix A, the improvement is deemed a Pre-Existing SSM. Risk reduction credit is obtained by inflating the Risk Index With Horns to show what the risk would have been at the crossing if the pre-existing SSM had not been implemented. Crossing closures and grade separations that occurred prior to the implementation of the quiet zone are not Pre-Existing SSMs and do not receive any risk reduction credit.

Example 1— A proposed New Quiet Zone has one crossing that is equipped with flashing lights and gates and has medians 100 feet in length on both sides of the crossing. The medians conform to the requirements in appendix A and qualify as a Pre-Existing SSM. The risk index as calculated for the crossing is 10,000. To calculate the Risk Index With Horns for this crossing, you divide the risk index by difference between one and the effectiveness rate of the pre-existing SSM (10,000 ÷ (1–0.75) = 40,000). This value (40,000) would then be averaged in with the risk indices of the other crossings to determine the proposed quiet zone's Risk Index With Horns. To calculate the Quiet Zone Risk Index, the original risk index is increased by 66.8% to account for the additional risk attributed to the absence of the train horn (10,000 × 1.668 = 16,680). This value (16,680) is then averaged into the risk indices of the other crossings that have also been increased by 66.8%. The resulting average is the Quiet Zone Risk Index.

Example 2— A Pre-Rule Quiet Zone consisting of four crossings has one crossing that is equipped with flashing lights and gates and has medians 100 feet in length on both sides of the crossing. The medians conform to the requirements in appendix A and qualify as a Pre-Existing SSM. The risk index as calculated for the crossing is 20,000. To calculate the Risk Index With Horns for this crossing, first reduce the risk index by 40 percent to reflect the risk reduction that would be achieved if train horns were routinely sounded (20,000 × 0.6 = 12,000). Next, divide the resulting risk index by difference between one and the effectiveness rate of the pre-existing SSM (12,000 ÷ (1–0.75) = 48,000). This value (48,000) would then be averaged with the adjusted risk indices of the other crossings to determine the pre-rule quiet zone's Risk Index With Horns. To calculate the Quiet Zone Risk Index, the original risk index (20,000) is then averaged into the risk original indices of the other crossings. The resulting average is the Quiet Zone Risk Index.

Pre-Existing Modified SSMs: Risk reduction credit may be taken by a public authority for a modified SSM that was previously implemented and is currently in place in the quiet zone. Modified SSMs are Alternative Safety Measures which must be approved by FRA. If an existing improvement is approved by FRA as a modified SSM as provided in appendix B, the improvement is deemed a Pre-Existing Modified SSM. Risk reduction credit is obtained by inflating the Risk Index With Horns to show what the risk would have been at the crossing if the pre-existing SSM had not been implemented. The effectiveness rate of the modified SSM will be determined by FRA. The public authority may provide information to FRA to be used in determining the effectiveness rate of the modified SSM. Once an effectiveness rate has been determined, follow the procedure previously discussed for Pre-Existing SSMs to determine the risk values that will be used in the quiet zone calculations.

Wayside Horns: Crossings with wayside horn installations will be treated as a one for one substitute for the train horn and are not to be included when calculating the Crossing Corridor Risk Index, the Risk Index with Horns or the Quiet Zone Risk Index.

Example— A proposed New Quiet Zone contains four crossings: A, B, C and D streets. All streets are equipped with flashing lights and gates. It is decided that C Street will have a wayside horn installed. Compute the risk indices for A, B and D streets. Since C Street is being treated with a wayside horn, it is not included in the calculation of risk. Calculate the Crossing Corridor Risk Index by averaging the risk indices for A, B and D streets. This value is also the Risk Index with Horns. Increase the risk indices for A, B and D streets by 66.8% and average the results. This is the initial Quiet Zone Risk Index for the proposed quiet zone.

C. Partial Quiet Zones

A Partial Quiet Zone is a quiet zone in which locomotive horns are not routinely sounded at public crossings for a specified period of time each day. For example, a quiet zone during only the nighttime hours would be a partial quiet zone. Partial quiet zones may be either New or Pre-Rule and follow the same rules as 24 hour quiet zones. New Partial Quiet Zones may be in effect during the hours of 10 p.m. to 7 a.m. All New Partial Quiet Zones must comply with all of the requirements for New Quiet Zones. For example, all public grade crossings that are open during the time that horns are silenced must be equipped with flashing lights and gates that are equipped with constant warning time (where practical) and power out indicators. Risk is calculated in exactly the same manner as for New Quiet Zones. The Quiet Zone Risk Index is calculated for the entire 24-hour period, even though the train horn will only be silenced during the hours of 10 p.m. to 7 a.m.

A Pre-Rule Partial Quiet Zone is a partial quiet zone at which train horns were not sounding as of October 9, 1996 and on December 18, 2003. All of the regulations that pertain to Pre-Rule Quiet Zones also pertain to Pre-Rule Partial Quiet Zones. The Quiet Zone Risk Index is calculated for the entire 24-hour period for Pre-Rule Partial Quiet Zones, even though train horns are only silenced during the nighttime hours. Pre-Rule Partial Quiet Zones may qualify for automatic approval in the same manner as Pre-Rule Quiet Zones with one exception. If the Quiet Zone Risk Index is less than twice the National Significant Risk Threshold, and

there have been no relevant collisions during the time period when train horns are silenced, then the Pre-Rule Partial Quiet Zone is automatically qualified. In other words, a relevant collision that occurred during the period of time that train horns were sounded will not disqualify a Pre-Rule Partial Quiet Zone that has a Quiet Zone Risk Index that is less than twice the National Significant Risk Index. Pre-Rule Partial Quiet Zones must provide the notification as required in § 222.43 in order to keep train horns silenced. A Pre-Rule Partial Quiet Zone may be converted to a 24 hour New Quiet Zone by complying with all of the New Quiet Zone regulations.

D. Intermediate Quiet Zones

An Intermediate Quiet Zone is one where horn restrictions were in place after October 9, 1996, but as of December 18, 2003 (the publication date of the Interim Final Rule). Intermediate Quiet Zones and Intermediate Partial Quiet Zones will be able to keep train horns silenced until June 24, 2006, provided notification is made per § 222.43. This will enable public authority to have additional time to make the improvement necessary to come into compliance with the rule. Intermediate Quiet Zones must conform to all the requirements for New Quiet Zones by June 24, 2006. Other than having the horn silenced for an additional year, Intermediate Quiet Zones are treated exactly like New Quiet Zones.

Section II—New Quiet Zones

FRA has established several approaches that may be taken in order to establish a New Quiet Zone under this rule. Please see the preceding discussions on ''Qualifying Conditions'' and ''Risk Reduction Methods'' to assist in the decision-making process on which approach to take. This following discussion provides the steps necessary to establish New Quiet Zones and includes both the Public Authority Designation and Public Authority Application to FRA methods. It must be remembered that in a New Quiet Zone all public crossings must be equipped with flashing lights and gates. The requirements are the same regardless of whether a 24-hour or partial quiet zone is being created.

A. Requirements for Both Public Authority Designation and Public Authority Application

The following steps are necessary when establishing a New Quiet Zone. This information pertains to both the Public Authority Designation and Public Authority Application to FRA methods.

1. The public authority must provide a written Notice of Intent (§ 222.43(a)(1) and § 222.43(b)) to the railroads that operate over the proposed quiet zone, the State agency responsible for highway and road safety and the State agency responsible for grade crossing safety. The purpose of this Notice of Intent is to provide an opportunity for the railroads and the State agencies to provide comments and recommendations to the public authority as it is planning the quiet zone. They will have 60 days to provide these comments to the public authority. The quiet zone cannot be created unless the Notice of Intent has been provided. FRA encourages public authorities to provide the required Notice of Intent early in the quiet zone development process. The railroads and State agencies can provide an expertise that very well may not be present within the public authority. FRA believes that it will be very useful to include these organizations in the planning process. For example, including railroads and State agencies in the inspections of the crossing will help ensure accurate Inventory information for the crossings. The railroad can provide information on whether the flashing lights and gates are equipped with constant warning time and power out indicators. Pedestrian crossings and private crossings with public access, industrial or commercial use that are within the quiet zone must have a diagnostic team review and be treated according to the team's recommendations. Railroads and the State agency responsible for grade crossing safety must be invited to the diagnostic team review. Note: Please see Section IV for details on the requirements of a Notice of Intent.

2. Determine all public, private and pedestrian at-grade crossings that will be included within the quiet zone. Also, determine any existing grade-separated crossings that fall within the quiet zone. Each crossing must be identified by the US DOT Crossing Inventory number and street or highway name. If a crossing does not have a US DOT crossing number, then contact FRA's Office of Safety (202–493–6299) for assistance.

3. Ensure that the quiet zone will be at least one-half mile in length. (§ 222.35(a)(1))

4. A complete and accurate Grade Crossing Inventory Form must be on file with FRA for all crossings (public, private and pedestrian) within the quiet zone. An inspection of each crossing in the proposed quiet zone should be performed and the Grade Crossing Inventory Forms updated, as necessary, to reflect the current conditions at each crossing. (§ 222.43(e)(2)(vi))

5. Every public crossing within the quiet zone must be equipped with active warning devices comprising both flashing lights and gates. The warning devices must be equipped with power out indicators. Constant warning time circuitry is also required unless existing conditions would prevent the proper operation of the constant warning time circuitry. FRA recommends that these automatic warning devices also be equipped with at least one bell to provide an audible warning to pedestrians. If the warning devices are already equipped with a bell (or bells), the bells may not be removed or deactivated. The plans for the quiet zone may be made assuming that flashing lights and gates are at all public crossings; however the quiet zone may not be implemented until all public crossings are actually equipped with the flashing lights and gates. (§§ 222.35(b)(1) and 222.35(b)(2))

6. Private crossings must have cross-bucks and ''STOP'' signs on both approaches to the crossing. Private crossings with public access, industrial or commercial use must have a diagnostic team review and be treated according to the team's recommendations. The public authority must invite the State agency responsible for grade crossing safety and all affected railroads to participate in the diagnostic review. (§§ 222.25(b) and (c))

7. Each highway approach to every public and private crossing must have an advanced warning sign (in accordance with the MUTCD) that advises motorists that train horns are not sounded at the crossing. (§§ 222.25(c)(1), 222.35(c)(1) and 222.35(c)(2))

8. Each pedestrian crossing must be reviewed by a diagnostic team and equipped or treated in accordance with the recommendation of the diagnostic team. The public authority must invite the State agency responsible for grade crossing safety and all affected railroads to participate in the diagnostic review. At a minimum pedestrian crossings must be equipped with signs that conform to the MUTCD that advise pedestrians that train horns are not sounded at the crossing. (§ 222.27)

B. New Quiet Zones—Public Authority Designation

Once again it should be remembered that all public crossings must be equipped with automatic warning devices consisting of flashing lights and gates in accordance with § 222.35(b). In addition, one of the following conditions must be met in order for a public authority to designate a new quiet zone without FRA approval:

a. One or more SSMs as identified in appendix A are installed at *each* public crossing in the quiet zone (§ 222.39(a)(1)); or

b. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold without SSMs installed at any crossings in the quiet zone (§ 222.39(a)(2)(i)); or

c. SSMs are installed at selected crossings, resulting in the Quiet Zone Risk Index being reduced to a level equal to, or less than, the Nationwide Significant Risk Threshold (§ 222.39(a)(2)(ii)); or

d. SSMs are installed at selected crossings, resulting in the Quiet Zone Risk Index being reduced to a level of risk that would exist if the horn were sounded at every crossing in the quiet zone (*i.e.*, the Risk Index with Horns) (§ 222.39(a)(3)).

Steps necessary to establish a New Quiet Zone using the Public Authority Application to FRA method:

1. If one or more SSMs as identified in appendix A are installed at each public crossing in the quiet zone, the requirements for a public authority designation quiet zone have been met. It is not necessary for the same SSM to be used at each crossing. Once the necessary improvements have been installed, Notice of Quiet Zone Establishment shall be provided and the quiet zone implemented in accordance with the rule. If SSMs are not installed at each crossings, proceed on to Step 2 and use the risk reduction method.

2. To begin, calculate the risk index for each public crossing within the quiet zone (*See* appendix D. FRA's web-based Quiet Zone Calculator may be used to do this calculation). If flashing lights and gates have to be installed at any public crossings, calculate the risk indices for such crossings as if lights and gates were installed. (Note:

Flashing lights and gates must be installed prior to initiation of the quiet zone.) If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index. Note: Private crossings and pedestrian crossings are not included when computing the risk for the proposed quiet zone.

3. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are routinely being sounded for crossings in the proposed quiet zone, this value is also the Risk Index with Horns.

4. In order to calculate the initial Quiet Zone Risk Index, first adjust the risk index at each public crossing to account for the increased risk due to the absence of the train horn. The absence of the horn is reflected by an increased risk index of 66.8% at gated crossings. The initial Quiet Zone Risk Index is then calculated by averaging the increased risk index for each public crossing within the proposed quiet zone. At this point the Quiet Zone Risk Index will equal the Risk Index with Horns multiplied by 1.668.

5. Compare the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, then the public authority may decide to designate a quiet zone and provide the Notice of Quiet Zone Establishment. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the Public Authority so that appropriate measures can be taken. (*See* § 222.51(a)).

6. If the Quiet Zone Risk Index is greater than the Nationwide Significant Risk Threshold, then select an appropriate SSM for a crossing. Reduce the inflated risk index calculated in Step 4 for that crossing by the effectiveness rate of the chosen SSM. (See appendix A for the effectiveness rates for the various SSMs). Recalculate the Quiet Zone Risk Index by averaging the revised inflated risk index with the inflated risk indices for the other public crossings. If this new Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, the quiet zone would qualify for public authority designation. If the Quiet Zone Risk Index is still higher than the Nationwide Significant Risk Threshold, treat another public crossing with an appropriate SSM and repeat the process until the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold. Once this result is obtained, the quiet zone has qualified for the public authority designation method, and Notice of Quiet Zone Establishment must be provided once all the necessary improvements have been installed. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken. (*See* § 222.51(a)).

7. If the public authority wishes to reduce the risk of the quiet zone to the level of risk that would exist if the horn were sounded at every crossing within the quiet zone, the public authority should calculate the initial Quiet Zone Risk Index as in Step 4. The objective is to now reduce the Quiet Zone Risk Index to the level of the Risk Index with Horns by adding SSMs at the crossings. The difference between the Quiet Zone Risk Index and the Risk Index with Horns is the amount of risk that will have to be reduced in order to fully compensate for lack of the train horn. The use of the Quiet Zone Calculator will aid in determining which SSMs may be used to reduce the risk sufficiently. Follow the procedure stated in Step 6, except that the Quiet Zone Risk Index must be equal to, or less than, the Risk Index with Horns instead of the Nationwide Significant Risk Threshold. Once this risk level is attained, the quiet zone has qualified for the public authority designation method, and Notice of Quiet Zone Establishment must be provided once all the necessary improvements have been installed. One important distinction with this option is that the public authority will never need to be concerned with the Nationwide Significant Risk Threshold or the Quiet Zone Risk Index. The rule's intent is to make the quiet zone as safe as if the train horns were sounding. If this is accomplished, the public authority may designate the crossings as a quiet zone and need not be concerned with possible fluctuations in the Nationwide Significant Risk Threshold or annual risk reviews.

C. New Quiet Zones—Public Authority Application to FRA

A public authority must apply to FRA for approval of a quiet zone under three conditions. First, if any of the SSMs selected for the quiet zone do not fully conform to the design standards set forth in appendix A. These are referred to as modified SSMs in appendix B. Second, when programmed law enforcement, public education and awareness programs, or photo enforcement is used to reduce risk in the quiet zone, these are referred to as non-engineering ASMs in appendix B. It should be remembered that non-engineering ASMs will require periodic monitoring as long as the quiet zone is in existence. Third, when engineering ASMs are used to reduce risk. Please see appendix B for detailed explanations of ASMs and the periodic monitoring of non-engineering ASMs.

The public authority is strongly encouraged to submit the application to FRA for review and comment before the appendix B treatments are initiated. This will enable FRA to provide comments on the proposed ASMs to help guide the application process. If non-engineering ASMs or engineering ASMs are proposed, the public authority also may wish to confirm with FRA that the methodology it plans to use to determine the effectiveness rates of the proposed ASMs is appropriate. A quiet zone that utilizes a combination of SSMs from appendix A and ASMs from appendix B must make a Public Authority Application to FRA. A complete and thoroughly documented application will help to expedite the approval process.

The following discussion is meant to provide guidance on the steps necessary to establish a new quiet zone using the Public Authority Application to FRA method. Once again it should be remembered that all public crossings must be equipped with automatic warning devices consisting of flashing lights and gates in accordance with § 222.35(b).

1. Gather the information previously mentioned in the section on ''Requirements for both Public Authority Designation and Public Authority Application.''

2. Calculate the risk index for each public crossing as directed in Step 2—Public Authority Designation.

3. Calculate the Crossing Corridor Risk Index, which is also the Risk Index with Horns, as directed in Step 3—Public Authority Designation.

4. Calculate the initial Quiet Zone Risk Index as directed in Step 4—Public Authority Designation.

5. Begin to reduce the Quiet Zone Risk Index through the use of ASMs and SSMs. Follow the procedure provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. (Remember that the public authority may choose which level of risk reduction is the most appropriate for its community.) Effectiveness rates for ASMs should be provided as follows:

a. Modified SSMs—Estimates of effectiveness for modified SSMs may be proposed based upon adjustments from the effectiveness rates provided in appendix A or from actual field data derived from the crossing sites. The application should provide an estimated effectiveness rate and the rationale for the estimate.

b. Non-engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, paragraph II B.

c. Engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, paragraph III B.

6. Once it has been determined through analysis that the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the public authority may make application to FRA for a quiet zone under § 222.39(b). FRA will review the application to determine the appropriateness of the proposed effectiveness rates, and whether or not the proposed application demonstrates that the quiet zone meets the requirements of the rule. When submitting the application to FRA for approval, the application must contain the following (§ 222.39(b)(1)):

a. Sufficient detail concerning the present safety measures at all crossings within the proposed quiet zone. This includes current and accurate crossing inventory forms for each public and private grade crossing.

b. Detailed information on the SSMs or ASMs that are proposed to be implemented and at which public crossings within the proposed quiet zone.

c. Membership and recommendations of the diagnostic team (if any) that reviewed the proposed quiet zone.

d. Statement of efforts taken to work with affected railroads and the State agency

responsible for grade crossing safety, including a list of any objections raised by the railroads or State agency.

e. A commitment to implement the proposed safety measures.

f. Demonstrate through data and analysis that the proposed measures will reduce the Quiet Zone Risk Index to equal, to or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns.

g. A copy of the application must be provided to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator. (§ 222.39(b)(3))

7. Upon receiving written approval from FRA of the quiet zone application, the public authority may then provide the Notice of Quiet Zone Establishment and implement the quiet zone. If the quiet zone is qualified by reducing the Quiet Zone Risk Index to at the least the level of the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken. (*See* § 222.51(a))

Note: The provisions stated above for crossing closures, grade separations, wayside horns, pre-existing SSMs and pre-existing modified SSMs apply for Public Authority Application to FRA as well.

Section III—Pre-Rule Quiet Zones

Pre-Rule Quiet Zones are treated slightly differently from New Quiet Zones in the rule. This is a reflection of the statutory requirement to ''take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings * * *.'' It also recognizes the historical experience of train horns not being sounded at Pre-Rule Quiet Zones.

Overview

Pre-Rule Quiet Zones that are not established by automatic approval (see discussion that follows) must meet the same requirements as New Quiet Zones as provided in § 222.39. In other words, risk must be reduced through the use of SSMs or ASMs so that the Quiet Zone Risk Index for the quiet zone has been reduced to either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone (*i.e.* the Risk Index with Horns) or to a risk level equal to, or less than, the Nationwide Significant Risk Threshold. Pre-Rule Quiet Zones must meet these requirements by June 24, 2010. (§ 222.41(c)(2)) There are four differences in the requirements between Pre-Rule Quiet Zones and New Quiet Zones that must be noted.

(1) First, since train horns have not been routinely sounded in the Pre-Rule Quiet Zone, it is not necessary to increase the risk indices of the public crossings to reflect the additional risk caused by the lack of a train horn. Since the train horn has already been silenced, the added risk caused by the lack of a horn is reflected in the actual collision history at the crossings. Collision history is an important part in the calculation of the severity risk indices. In other words, the Quiet Zone Risk Index is calculated by averaging the existing risk index for each public crossing without the need to increase the risk index by 66.8%. For Pre-Rule Quiet Zones, the Crossing Corridor Risk Index and the initial Quiet Zone Risk Index have the same value.

(2) Second, since train horns have been silenced at the crossings, it will be necessary to mathematically determine what the risk level would have been at the crossings if train horns had been routinely sounded. These revised risk levels then will be used to calculate the Risk Index with Horns. This calculation is necessary to determine how much risk must be eliminated in order to compensate for the lack of the train horn. This will allow the public authority to have the choice to reduce the risk to at least the level of the Nationwide Significant Risk Threshold or to fully compensate for the lack of the train horn.

To calculate the Risk Index with Horns, the first step is to divide the existing severity risk index for each crossing by the appropriate value as shown in Table 1. This process eliminates the risk that was caused by the absence of train horns. The table takes into account that the train horn has been found to produce different levels of effectiveness in preventing collisions depending on the type of warning device at the crossing. (Note: FRA's web based Quiet Zone Calculator will perform this computation automatically for Pre-Rule Quiet Zones.) The Risk Index with Horns is the average of the revised risk indices. The difference between the calculated Risk Index with Horns and the Quiet Zone Risk Index is the amount of risk that would have to be reduced in order to fully compensate for the lack of train horns.

TABLE 1.—RISK INDEX DIVISOR VALUES

	Passive	Flashing lights	Lights and gates
U.S.	1.749	1.309	1.668

(3) The third difference is that credit is given for the risk reduction that is brought about through the upgrading of the warning devices at public crossings (§ 222.35(b)(3)). For New Quiet Zones, all crossings must be equipped with automatic warning devices consisting of flashing lights and gates. Crossings without gates must have gates installed. The severity risk index for that crossing is then calculated to establish the risk index that is used in the Risk Index with Horns. The Risk Index with Horns is then increased by 66.8% to adjust for the lack of the train horn. The adjusted figure is the initial Quiet Zone Risk Index. There is no credit received for the risk reduction that is attributable to warning device upgrades in New Quiet Zones.

For Pre-Rule Quiet Zones, the Risk Index with Horns is calculated from the initial risk indices which use the warning devices that are currently installed. If a public authority elects to upgrade an existing warning device as part of its quiet zone plan, the accident prediction value for that crossing will be re-calculated based on the upgraded warning device. (Once again, FRA's web-based Quiet Zone Calculator can do the actual computation.) The new accident prediction value is then used in the severity risk index formula to determine the risk index for the crossing. This adjusted risk index is then used to compute the new Quiet Zone Risk Index. This computation allows the risk reduction attributed to the warning device upgrades to be used in establishing a quiet zone.

(4) The fourth difference is that Pre-Rule Quiet Zones have different minimum requirements under § 222.35. A Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996 (§ 222.35(a)(2)). A Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing (§ 222.35(b)(3)). The existing crossing safety warning systems in place as of December 18, 2003 may be retained but cannot be downgraded. It also is not necessary for the automatic warning devices to be equipped with constant warning time devices or power out indicators; however, when the warning devices are upgraded, constant warning time and power out indicators will be required if reasonably practical (§ 222.35(b)(3)). Advance warning signs that notify the motorist that train horns are not sounded and STOP signs and crossbucks at private crossings do not have to be installed until June 24, 2008, which allows three years to install the required signage (§§ 222.35(c)(3) and 222.35(c)(4)).

A. Requirements for Both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones

The following is necessary when establishing a Pre-Rule Quiet Zone. This information pertains to Automatic Approval, the Public Authority Designation and Public Authority Application to FRA methods.

1. Determine all public, private and pedestrian at-grade crossings that will be included within the quiet zone. Also determine any existing grade separated crossings that fall within the quiet zone. Each crossing must be identified by the U.S. DOT Crossing Inventory number and street name. If a crossing does not have a U.S. DOT crossing number, then contact FRA for assistance.

2. Document the length of the quiet zone. It is not necessary that the quiet zone be at least one-half mile in length. Pre-Rule Quiet Zones may be shorter than one-half mile. However, the addition of a new crossing that is not a part of an existing Pre-Rule Quiet Zone to a quiet zone nullifies its pre-rule status, and the resulting New Quiet Zone must be at least one-half mile. The deletion of a crossing from a Pre-Rule Quiet Zone (except through closure or grade separation) must result in a quiet zone that is at least one half mile in length. It is the intent of the rule to allow adjacent Pre-Rule Quiet Zones to be combined into one large pre-rule quiet zone if the respective public authorities desire to do so.

3. A complete and accurate Grade Crossing Inventory Form must be on file with FRA for all crossings (public, private and pedestrian) within the quiet zone. An inspection of each crossing in the proposed quiet zone should be performed and the Grade Crossing Inventory Forms updated, as necessary, to reflect the current conditions at each crossing.

4. Pre-Rule Quiet Zones must retain, and may upgrade, the existing grade crossing safety warning systems. Unlike New Quiet Zones, it is not necessary that every public crossing within a Pre-Rule Quiet Zone be equipped with active warning devices comprising both flashing lights and gates. Existing warning devices need not be equipped with power out indicators and constant warning time circuitry. If warning devices are upgraded to flashing lights, or flashing lights and gates, the upgraded equipment must include, as is required for New Quiet Zones, power out indicators and constant warning time devices (if reasonably practical).

5. By June 24, 2008, private crossings must have cross-bucks and ''STOP'' signs on both approaches to the crossing.

6. By June 24, 2008, pedestrian crossings must be equipped with signs that conform to the MUTCD that advise pedestrians that train horns are not sounded at the crossing.

7. By June 24, 2008, each highway approach to every public and private crossing must have an advanced warning sign (in accordance with the MUTCD) that advises motorists that train horns are not sounded at the crossing.

8. It will be necessary for the public authority to provide a Notice of Quiet Zone Continuation in order for the railroads not to start sounding train horns when the rule becomes effective. A detailed discussion of the requirements of § 222.43(c) is provided in Section IV of this appendix. The Notice of Quiet Zone Continuation must be provided to the appropriate parties by all Pre-Rule Quiet Zones that have not established quiet zones by automatic approval. This should be done no later than June 3, 2005 to ensure that train horns will not start being sounded on June 24, 2005. A Pre-Rule Quiet Zone may provide a Notice of Quiet Zone Continuation before it has determined whether or not it qualifies for automatic approval. Once it has been determined that the Pre-Rule Quiet Zone will be established by automatic approval, the Public Authority must provide the Notice of Quiet Zone Establishment. This must be accomplished no later than December 24, 2005. If the Pre-Rule Quiet Zone does not qualify for automatic approval, the Notice of Quiet Zone Continuation will enable the train horns to be silenced until the quiet zone is established in accordance with the rule.

B. Pre-Rule Quiet Zones—Automatic Approval

In order for a Pre-Rule Quiet Zone to be established under this rule (§ 222.41(a)), one of the following conditions must be met:

a. One or more SSMs as identified in appendix A are installed at *each* public crossing in the quiet zone; or

b. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold; or

c. The Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the preceding five years; or

d. The Quiet Zone Risk Index is equal to, or less than, the Risk Index With Horns.

Additionally, the Pre-Rule Quiet Zone must be in compliance with the minimum requirements for quiet zones (§ 222.35) and the notification requirements in § 222.43.

The following discussion is meant to provide guidance on the steps necessary to determine if a Pre-Rule Quiet Zone qualifies for automatic approval.

1. All of the items listed in *Requirements for Both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones* previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

2. If one or more SSMs as identified in appendix A are installed at each public crossing in the quiet zone, the quiet zone qualifies and notification should take place. If the Pre-Rule Quiet Zone does not qualify by this step, proceed on to the next step.

3. Calculate the risk index for each public crossing within the quiet zone (See appendix D.) Be sure that the risk index is calculated using the formula appropriate for the type of warning device that is actually installed at the crossing. Unlike New Quiet Zones, it is not necessary to calculate the risk index using flashing lights and gates as the warning device at every public crossing. (FRA's web-based Quiet Zone Calculator may be used to simplify the calculation process). If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index.

4. The Quiet Zone Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. (Note: The initial Quiet Zone Risk Index and the Crossing Corridor Risk Index are the same for Pre-Rule Quiet Zones.)

5. Compare the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, then the quiet zone qualifies for automatic approval, and the public authority may provide the Notice of Quiet Zone Establishment. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is found to be above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (See § 222.51(b)). If the Pre-Rule Quiet Zone is not established by this step, proceed on to the next step.

6. If the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the preceding five years, then the quiet zone qualifies for automatic approval and the public authority may provide the Notice of Quiet Zone Establishment. (Note: A relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision where the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car.) With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above two times the Nationwide Significant Risk Threshold, or a relevant collision has occurred during the preceding year, FRA will notify the public authority so that appropriate measures can be taken (*See* § 222.51(b)).

7. If the Pre-Rule Quiet Zone is not established by automatic approval, continuation of the quiet zone will require implementation of SSMs or ASMs to reduce the Quiet Zone Risk Index for the quiet zone to a risk level equal to, or below, either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone (*i.e.* the Risk Index with Horns) or the Nationwide Significant Risk Threshold. This is the same methodology used to create New Quiet Zones with the exception of the four differences previously noted. A review of the previous discussion on the two methods used to establish quiet zones may prove helpful in determining which would be the most beneficial to use for a particular Pre-Rule Quiet Zone.

C. Pre-Rule Quiet Zones—Public Authority Designation

The following discussion is meant to provide guidance on the steps necessary to

establish a Pre-Rule Quiet Zone using the Public Authority Designation method.

1. The public authority must provide a written Notice of Detailed Plan (§§ 222.43(a)(3) and 222.43(d)) to the railroads that operate over the proposed quiet zone, the State agency responsible for highway and road safety and the State agency responsible for grade crossing safety. This notice must be given at least four months before the filing of the detailed plan with FRA as required in § 222.41(c)(2). The purpose of this Notice of Detailed Plan is to provide an opportunity for the railroads and the State agencies to provide comments and recommendations to the public authority as it is planning the quiet zone. They will have 60 days to provide these comments to the public authority. The quiet zone cannot be created unless the Notice of Detailed Plan has been provided. FRA encourages public authorities to provide the required Notice of Detailed Plan early in the quiet zone development process. The railroads and State agencies can provide an expertise that very well may not be present within the public authority. FRA believes that it will be very useful to include these organizations in the planning process. For example, including them in the inspections of the crossing will help ensure accurate Inventory information for the crossings. Note: Please see Section IV for details on the requirements of a Notice of Detailed Plan.

2. All of the items listed in ''Requirements for both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones'' previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

3. Calculate the risk index for each public crossing within the quiet zone as in Step 3—Pre-Rule Quiet Zones—Automatic Approval.

4. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are not being sounded for crossings, this value is actually the initial Quiet Zone Risk Index.

5. Calculate Risk Index with Horns by the following:

a. For each public crossing, divide the risk index that was calculated in Step 2 by the appropriate value in Table 1. This produces the risk index that would have existed had the train horn been sounded.

b. Average these reduced risk indices together. The resulting average is the Risk Index with Horns.

6. Begin to reduce the Quiet Zone Risk Index through the use of SSMs or by upgrading existing warning devices. Follow the procedure provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. A public authority may elect to upgrade an existing warning device as part of its Pre-Rule Quiet Zone plan. When upgrading a warning device, the accident prediction value for that crossing must be re-calculated for the new warning device. Determine the new risk index for the upgraded crossing by using the new accident prediction value in the severity risk index formula. This new risk index is then used to compute the new Quiet Zone Risk Index. (Remember that FRA's web-based Quiet zone Calculator will be able to do the actual computations.) Once the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the quiet zone has qualified for the Public Authority Designation method, and the public authority may provide the Notice of Quiet Zone Establishment once all the necessary improvements have been installed. If the quiet zone is established by reducing the Quiet Zone Risk Index to a risk level equal to, or less than, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (See § 222.51(b)).

Note: The provisions stated above for crossing closures, grade separations, wayside horns, pre-existing SSMs and pre-existing modified SSMs apply for Public Authority Application to FRA as well.

D. Pre-Rule Quiet Zones—Public Authority Application to FRA

The following discussion is meant to provide guidance on the steps necessary to establish a Pre-Rule Quiet zone using the Public Authority Application to FRA method.

1. The public authority must provide a written Notice of Detailed Plan (§§ 222.43(a)(3) and 222.43(d)) to the railroads that operate over the proposed quiet zone, the State agency responsible for highway and road safety and the State agency responsible for grade crossing safety. This notice must be given at least four months before the filing of the detailed plan with FRA as required in § 222.41(c)(2). The purpose of this Notice of Detailed Plan is to provide an opportunity for the railroads and the State agencies to provide comments and recommendations to the public authority as it is planning the quiet zone. They will have 60 days to provide these comments to the public authority. The quiet zone cannot be created unless the Notice of Detailed Plan has been provided. FRA encourages public authorities to provide the required Notice of Detailed Plan early in the quiet zone development process. The railroads and State agencies can provide an expertise that very well may not be present within the public authority. FRA believes that it will be very useful to include these organizations in the planning process. For example, including them in the inspections of the crossing will help ensure accurate Inventory information for the crossings. Note: Please see Section IV for details on the requirements of a Notice of Detailed Plan.

2. All of the items listed in ''Requirements for both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones'' previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

3. Calculate the risk index for each public crossing within the quiet zone (See appendix D. FRA's web-based Quiet Zone Calculator may be used to simplify the calculation process). If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index.

4. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are not being sounded for crossings, this value is actually the initial Quiet Zone Risk Index.

5. Calculate Risk Index with Horns by the following:

a. For each public crossing, divide its risk index that was calculated in Step 2 by the appropriate value in Table 1. This produces the risk index that would have existed had the train horn been sounded.

b. Average these reduced risk indices together. The resulting average is the Risk Index with Horns.

6. Begin to reduce the Quiet Zone Risk Index through the use of ASMs and/or SSMs. Follow the procedure provided in Step 6—New Quiet Zones Public Authority Designation—until the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. A public authority may elect to upgrade an existing warning device as part of its Pre-Rule Quiet Zone plan. When upgrading a warning device, the accident prediction value for that crossing must be re-calculated for the new warning device. Determine the new risk index for the upgraded crossing by using the new accident prediction value in the severity risk index formula. (Remember that FRA's web-based quiet zone risk calculator will be able to do the actual computations.) This new risk index is then used to compute the new Quiet Zone Risk Index. Effectiveness rates for ASMs should be provided as follows:

a. Modified SSMs—Estimates of effectiveness for modified SSMs may be proposed based upon adjustments from the benchmark levels provided in appendix A or from actual field data derived from the crossing sites. The application should provide an estimated effectiveness rate and the rationale for the estimate.

b. Non-engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, section II B.

c. Engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, section III B.

7. Once it has been determined through analysis that the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the public authority may make application to

FRA for a quiet zone under § 222.39(b). FRA will review the application to determine the appropriateness of the proposed effectiveness rates, and whether or not the proposed application demonstrates that the quiet zone meets the requirements of the rule. When submitting the application to FRA for approval, it should be remembered that the application must contain the following (§ 222.39(b)(1)):

a. Sufficient detail concerning the present safety measures at all crossings within the proposed quiet zone. This includes current and accurate crossing inventory forms for each public and private grade crossing.

b. Detailed information on the SSMs, ASMs, or upgraded warning devices that are proposed to be implemented and at which public crossings within the proposed quiet zone.

c. Membership and recommendations of the diagnostic team (if any) that reviewed the proposed quiet zone.

d. Statement of efforts taken to work with affected railroads and the State agency responsible for grade crossing safety, including a list of any objections raised by the railroads or State agency.

e. A commitment to implement the proposed safety measures.

f. Demonstrate through data and analysis that the proposed measures will reduce the Quiet Zone Risk Index to, or below, either the Nationwide Significant Risk Threshold or the Risk Index with Horns.

g. A copy of the application must be provided to all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator. (§ 222.39(b)(3))

8. Upon receiving written approval from FRA of the quiet zone application, the public authority may then provide the Notice of Quiet Zone Establishment and implement the quiet zone. If the quiet zone is established by reducing the Quiet Zone Risk Index to a level equal to, or less than, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (*See* § 222.51(b)).

Note: The provisions stated above for crossing closures, grade separations, wayside horns, pre-existing SSMs and pre-existing modified SSMs apply for Public Authority Application to FRA as well.

Section IV—Required Notifications

A. Introduction

The public authority is responsible for providing notification to parties that will be affected by the quiet zone. There are several different types of notifications and a public authority may have to make more than one notification during the entire process of complying with the regulation. The notification process is to ensure that interested parties are made aware in a timely manner of the establishment or continuation of quiet zones. It will also provide an opportunity for State agencies and affected railroads to provide input to the public authority during the development of quiet zones. Specific information is to be provided so that the crossings in the quiet zone can be identified. Providing the appropriate notification is important because once the rule becomes effective, railroads will be obligated to sound train horns when approaching all public crossings unless notified in accordance with the rule that a New Quiet Zone has been established or that a Pre-Rule or Intermediate Quiet Zone is being continued.

B. Notice of Intent—§ 222.43(b)

The purpose of the Notice of Intent is to provide notice to the railroads and State agencies that the public authority is planning on creating a New Quiet Zone and to provide an opportunity for the railroad and the state agencies to give input to the public authority during the quiet zone development process. (**Note:** This includes Intermediate and Intermediate Partial Quiet Zones that must qualify as New Quiet Zones in order to keep the train horn silenced as of June 24, 2006.) The State agencies and railroads will be given sixty days to provide information and comments to the public agency. Each public authority that is creating a New Quiet Zone must provide written notice, by certified mail, return receipt requested, to the following:

1. All railroads operating within the proposed quiet zone.

2. State agency responsible for highway and road safety.

3. State agency responsible for grade crossing safety.

The Notice of Intent must contain the following information:

1. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossings within the proposed quiet zone. The crossings are to be identified by both the U.S. DOT Crossing Inventory Number and the street or highway name.

2. A statement of the time period within which the restrictions would be in effect on the routine sounding of train horns (*i.e.,* 24 hours or from 10 p.m. to 7 a.m.).

3. A brief explanation of the public authority's tentative plans for implementing improvements within the proposed quiet zone.

4. The name and title of the person who will act as the point of contact during the quiet zone development process and how that person can be contacted.

5. A list of the names and addresses of each party that will receive a copy of the Notice of Intent.

The parties that receive the Notice of Intent will be able to submit information or comments to the public authority for 60 days. The public authority will not be able to establish the quiet zone during the 60 day comment period unless each railroad and State agency that receives the Notice of Intent provides either written comments to the public authority or a written statement waiving its right to provide comments on the Notice of Intent. The public authority must provide an affirmation in the Notice of Quiet Zone Establishment that each of the required parties was provided the Notice of Intent and the date it was mailed. If the quiet zone is being established within 60 days of the mailing of the Notice of Intent, the public authority also must affirm each of the parties have provided written comments or waived its right to provide comments on the Notice of Quiet Zone Establishment.

C. Notice of Quiet Zone Continuation—§ 222.43(c)

The purpose of the Notice of Quiet Zone Continuation is to provide a means for the public authority to formally advise affected parties that an existing quiet zone is being continued after the effective date of the rule. All Pre-Rule, Pre-Rule Partial, Intermediate and Intermediate Partial Quiet Zones must provide this Notice of Quiet Zone Continuation no later than June 3, 2005 to ensure that train horns are not sounded at public crossings when the rule becomes effective on June 24, 2005. This will enable railroads to properly comply with the requirements of the Final Rule.

Each public authority that is continuing an existing Pre-Rule, Pre-Rule Partial, Intermediate and Intermediate Partial Quiet Zone must provide written notice, by certified mail, return receipt requested, to the following:

1. All railroads operating over the public highway-rail grade crossings within the quiet zone.

2. The highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone.

3. The landowner having control over any private crossings within the quiet zone.

4. The State agency responsible for highway and road safety.

5. The State agency responsible for grade crossing safety.

6. The Associate Administrator.

The Notice of Quiet Zone Continuation must contain the following information:

1. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

2. A specific reference to the regulatory provision that provides the basis for quiet zone continuation, citing as appropriate, § 222.41 or 222.42.

3. A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (*i.e.*, 24 hours or nighttime hours only.)

4. An accurate and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects conditions currently existing at the crossing.

5. The name and title of the person responsible for monitoring compliance with

the requirements of this part and the manner in which that person can be contacted.

6. A list of the names and addresses of each party that will receive the Notice of Quiet Zone Continuation.

7. A statement signed by the chief executive officer of each public authority participating in the continuation of the quiet zone, in which the chief executive officer certifies that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

Public authorities should remember that this notice is required to ensure that train horns will remain silent. Even if a public authority has not been able to determine whether its Pre-Rule or Pre-Rule Partial Quiet Zone qualifies for automatic approval under the rule, it should issue a Notice of Quiet Zone Continuation to keep the train horns silent after the effective date of the rule.

D. Notice of Detailed Plan—§ 222.43(d)

The purpose of the Notice of Detailed Plan is to provide notice to the railroads and State agencies that the public authority is planning on filing a detailed plan for a Pre-Rule or Pre-Rule Partial Quiet Zone that was not established by automatic approval under § 222.41. The public authority is required to provide to FRA a detailed plan on how the quiet zone will be brought into compliance with the rule. The Notice of Detailed Plan will provide an opportunity for the railroad and the state agencies to give input to the public authority during the quiet zone development process. The Notice of Detailed Plan must be provided at least four months before the public authority submits its detailed plan to FRA. The State agencies and railroads will be given 60 days to provide information and comments to the public agency.

Each public authority that is required to provide FRA with a detailed plan must provide written notice, by certified mail, return receipt requested, to the following:

1. All railroads operating within the quiet zone.

2. State agency responsible for highway and road safety.

3. State agency responsible for grade crossing safety.

The Notice of Detailed Plan must contain the following information:

1. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone. The crossings are to be identified by both the U.S. DOT Crossing Inventory Number and the street or highway name.

2. A statement of the time period within which the restrictions would be in effect on the routine sounding of train horns (*i.e.,* 24 hours or nighttime hours only).

3. A brief explanation of the public authority's tentative plans for implementing improvements within the proposed quiet zone.

4. The name and title of the person who will act as the point of contact during the quiet zone development process and how that person can be contacted.

5. A list of the names and addresses of each party that will receive a copy of the Notice of Detailed Plan.

The parties that receive the Notice of Detailed Plan will be able to submit information or comments to the public authority for 60 days. The public authority must provide an affirmation that each of the parties has provided been provided the Notice of Detailed Plan and provide the date that the notice was mailed.

E. Notice of Quiet Zone Establishment—§ 222.43(e)

The purpose of the Notice of Quiet Zone Establishment is to provide a means for the public authority to formally advise affected parties that a quiet zone is being established. Notice of Quiet Zone Establishment must be provided under the following circumstances:

1. A New Quiet Zone or New Partial Quiet Zone is being created.

2. A Pre-Rule Quiet Zone or a Pre-Rule Partial Quiet Zone that qualifies for automatic approval under the rule is being established.

3. An Intermediate Quiet Zone or Intermediate Partial Quiet Zone that is creating a New Quiet Zone under the rule. Please note that these quiet zones must be brought into compliance with the rule by June 24, 2006.

4. A Pre-Rule Quiet Zone or a Pre-Rule Partial Quiet Zone that was not established by automatic approval and has since implemented improvements to establish a quiet zone in accordance to the rule.

Each public authority that is establishing a quiet zone under the above circumstances must provide written notice, by certified mail, return receipt requested, to the following:

1. All railroads operating over the public highway-rail grade crossings within the quiet zone.

2. The highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone.

3. The landowner having control over any private crossings within the quiet zone.

4. The State agency responsible for highway and road safety.

5. The State agency responsible for grade crossing safety.

6. The Associate Administrator.

The Notice of Quiet Establishment must contain the following information:

1. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

2. A specific reference to the regulatory provision that provides the basis for quiet zone establishment, citing as appropriate, § 222.39(a)(1), 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.39(b), 222.41(a)(1)(i), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(i), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv).

(a) If the Notice of Quiet Establishment contains a specific reference to § 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv), it shall include a copy of the FRA web page that contains the quiet zone data upon which the public authority is relying.

(b) If the Notice of Quiet Establishment contains a specific reference to § 222.39(b), it shall include a copy of FRA's notification of approval.

3. If a diagnostic team review was required under § 222.25 (private crossings) or § 222.27 (pedestrian crossings), the Notice of Quiet Establishment shall include a statement affirming that the State agency responsible for grade crossing safety and all affected railroads were provided an opportunity to participate in the diagnostic team review. The Notice of Quiet Establishment shall also include a list of recommendations made by the diagnostic team.

4. A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (*i.e.,* 24 hours or from 10 p.m. until 7 a.m.).

5. An accurate and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects the conditions existing at the crossing before any new SSMs or ASMs were implemented.

6. An accurate, complete and current Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects SSMs and ASMs in place upon establishment of the quiet zone. SSMs and ASMs that cannot be fully described on the Inventory Form shall be separately described.

7. If the public authority was required to provide a Notice of Intent:

(a) The Notice of Quiet Zone Establishment shall contain a statement affirming that the Notice of Intent was provided in accordance with the rule. This statement shall also state the date on which the Notice of Intent was mailed.

(b) If the Notice of Quiet Zone Establishment will be mailed less than 60 days after the date on which the Notice of Intent was mailed, the Notice of Quiet Zone Establishment shall also contain a written statement affirming that comments and/or written waiver statements have been received from each railroad operating over public grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety.

8. If the public authority was required to provide a Notice of Detailed Plan, the Notice of Quiet Zone Establishment shall contain a statement affirming that the Notice of Detailed Plan was provided and the date on which the Notice of Detailed Plan was mailed.

9. The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

10. A list of the names and addresses of each party that is receiving a copy of the Notice of Quiet Establishment.

11. A statement signed by the chief executive officer of each public authority participating in the establishment of the quiet zone, in which the chief executive officer

shall certify that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

Section V—Examples of Quiet Zone Implementations

Example 1—New Quiet Zone

(a) A public authority wishes to create a New Quiet Zone over four public crossings. All of the crossings are equipped with flashing lights and gates, and the length of the quiet zone is 0.75 mile. There are no private crossings within the proposed zone.

(b) The tables that follow show the street name in the first column, and the existing risk index for each crossing with the horn sounding (''Crossing Risk Index w/Horns'') in the second. The third column, ''Crossing Risk Index w/o Horns,'' is the risk index for each crossing after it has been inflated by 66.8% to account for the lack of train horns. The fourth column, ''SSM Eff,'' is the effectiveness of the SSM at the crossing. A zero indicates that no SSM has been applied. The last column, ''Crossing Risk Index w/o Horns Plus SSM,'' is the inflated risk index for the crossing after being reduced by the implementation of the SSM. At the bottom of the table are two values. The first is the Risk Index with Horns (''RIWH'') which represents the average initial amount of risk in the proposed quiet zone with the train horn sounding. The second is the Quiet Zone Risk Index (''QZRI''), which is the average risk in the proposed quiet zone taking into consideration the increased risk caused by the lack of train horns and the reductions in risk attributable to the installation of SSMs. For this example, it is assumed that the Nationwide Significant Risk Threshold is 17,030. In order for the proposed quiet zone to qualify under the rule, the Quiet Zone Risk Index must be reduced to a level at, or below, the Nationwide Significant Risk Threshold (17,030) or the Risk Index with Horns.

(c) Table 2 shows the existing conditions in the proposed quiet zone. SSMs have not yet been installed. The Risk Index with Horns for the proposed quiet zone is 11,250. The Quiet Zone Risk Index without any SSMs is 18,765.

TABLE 2

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0	20016
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0	25020
	RIWH			QZRI
	11250			18765

(d) The public authority decides to install traffic channelization devices at D Street. Reducing the risk at the crossing that has the highest severity risk index will provide the greatest reduction in risk. The effectiveness of traffic channelization devices is 0.75. Table 3 shows the changes in the proposed quiet zone corridor that would occur when traffic channelization devices are installed at D Street. The Quiet Zone Risk Index has been reduced to 14,073.75. This reduction in risk would qualify the quiet zone as the risk has been reduced lower than the Nationwide Significant Risk Threshold which is 17,030.

TABLE 3

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0	20016
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0.75	6255
	RIWH			QZRI
	11250			14073.75

(e) The public authority realizes that reducing the Quiet Zone Risk Index to a level below the Nationwide Significant Risk Threshold will result in an annual re-calculation of the Quiet Zone Risk Index and comparison to the Nationwide Significant Risk Threshold. As the Quiet Zone Risk Index is close to the Nationwide Significant Risk Threshold (14,074 to 17,030), there is a reasonable chance that the Quiet Zone Risk Index may some day exceed the Nationwide Significant Risk Threshold. This would result in the quiet zone no longer being qualified and additional steps would have to be taken to keep the quiet zone. Therefore, the public authority decides to reduce the risk further by the use of traffic channelization devices at A Street. Table 4 shows the results of this change. The Quiet Zone Risk Index is now 10,320.75 which is less than the Risk Index with Horns of 11,250. The quiet zone now qualifies by fully compensating for the loss of train horns and will not have to undergo annual reviews of the Quiet Zone Risk Index.

TABLE 4

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0.75	5004
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0.75	6255
	RIWH			QZRI
	11250			10320.75

Example 2—Pre-Rule Quiet Zone

(a) A public authority wishes to qualify a Pre-Rule Quiet Zone which did not meet the requirements for Automatic Approval because the Quiet Zone Risk Index is greater than twice the Nationwide Significant Risk Threshold. There are four public crossings in the Pre-Rule Quiet Zone. Three of the crossings are equipped with flashing lights and gates, and the fourth (Z Street) is passively signed with a STOP sign. The length of the quiet zone is 0.6 mile, and there are no private crossings within the proposed zone.

(b) The tables that follow are very similar to the tables in Example 1. The street name is shown in the first column, and the existing risk index for each crossing (''Crossing Risk Index w/o Horns'') in the second. This is a change from the first example because the risk is calculated without train horns sounding because of the existing ban on whistles. The third column, ''Crossing Risk Index w/Horns'', is the risk index for each crossing after it has been adjusted to reflect what the risk would have been had train horns been sounding. This is mathematically done by dividing the existing risk index for the three gated crossing by 1.668. The risk at the passive crossing at Z Street is divided by 1.749. (See the above discussion in ''Pre-Rule Quiet Zones—Establishment Overview'' for more information.) The fourth column, ''SSM Eff'', is the effectiveness of the SSM at the crossing. A zero indicates that no SSM has been applied. The last column, ''Crossing Risk Index w/o Horns Plus SSM'', is the risk index without horns for the crossing after being reduced for the implementation of the SSM. At the bottom of the table are two values. The first is the Risk Index with Horns (RIWH), which represents the average initial amount of risk in the proposed quiet zone with the train horn sounding. The second is the Quiet Zone Risk Index (''QZRI''), which is the average risk in the proposed quiet zone taking into consideration the increased risk caused by the lack of train horns and reductions in risk attributable to the installation of SSMs. Once again it is assumed that the Nationwide Significant Risk Threshold is 17,030. The Quiet Zone Risk Index must be reduced to either the Nationwide Significant Risk Threshold (17,030) or to the Risk Index with Horns in order to qualify under the rule.

(c) Table 5 shows the existing conditions in the proposed quiet zone. SSMs have not yet been installed. The Risk Index with Horns for the proposed quiet zone is 18,705.83. The Quiet Zone Risk Index without any SSMs is 31,375. Since the Nationwide Significant Risk Threshold is less than the calculated Risk Index with Horns, the public authority's goal will be to reduce the risk to at least value of the Risk Index with Horns. This will qualify the Pre-Rule Quiet Zone under the rule.

TABLE 5

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0	35000
X	42000	25179.86	0	42000
Y	33500	20083.93	0	33500
Z	15000	8576.33	0	15000
	RIWH 18705.83			QZRI 31375

(d) The Z Street crossing is scheduled to have flashing lights and gates installed as part of the state's highway-rail grade crossing safety improvement plan (Section 130). While this upgrade is not directly a part of the plan to authorize a quiet zone, the public authority may take credit for the risk reduction achieved by the improvement from a passive STOP sign crossing to a crossing equipped with flashing lights and gates. Unlike New Quiet Zones, upgrades to warning devices in Pre-Rule Quiet Zones do contribute to the risk reduction necessary to qualify under the rule. Table 6 shows the quiet zone corridor after including the warning device upgrade at Z Street. The Quiet Zone Risk Index has been reduced to 29,500.

TABLE 6

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0	35000
X	42000	25179.86	0	42000
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH 18705.83			QZRI 29500

(e) The public authority elects to install four-quadrant gates without vehicle presence detection at X Street. As shown in Table 7, this reduces the Quiet Zone Risk Index to 20,890. This risk reduction is not sufficient to qualify as quiet zone under the rule.

TABLE 7

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0	35000
X	42000	25179.86	0.82	7560
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH 18705.83			QZRI 20890

(f) The public authority next decides to use traffic channelization devices at W Street. Table 8 shows that the Quiet Zone Risk Index is now reduced to 14,327.5. This risk reduction fully compensates for the loss of the train horn as it is less than the Risk Index with Horns. The quiet zone is qualified under the rule.

TABLE 8

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0.75	8750
X	42000	25179.86	0.82	7560
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH 18705.83			QZRI 14327.5

Appendix D to Part 222 ''Determining Risk Levels

Introduction

The Nationwide Significant Risk Threshold, the Crossing Corridor Risk Index, and the Quiet Zone Risk Index are all measures of collision risk at public highway-rail grade crossings that are weighted by the severity of the associated casualties. Each crossing can be assigned a risk index.

(a) The *Nationwide Significant Risk Threshold* represents the average severity weighted collision risk for all public highway-rail grade crossings equipped with lights and gates nationwide where train horns are routinely sounded. FRA developed this index to serve as a threshold of permissible risk for quiet zones established under this rule.

(b) The *Crossing Corridor Risk Index* represents the average severity weighted collision risk for all public highway-rail grade crossings along a defined rail corridor.

(c) The *Quiet Zone Risk Index* represents the average severity weighted collision risk for all public highway-rail grade crossings that are part of a quiet zone.

The Prediction Formulas

(a) The Prediction Formulas were developed by DOT as a guide for allocating scarce traffic safety budgets at the State level. They allow users to rank candidate crossings for safety improvements by collision probability. There are three formulas, one for each warning device category:

1. Automatic gates with flashing lights;
2. Flashing lights with no gates; and
3. Passive warning devices.

(b) The prediction formulas can be used to derive the following for each crossing:

1. The predicted collisions (PC)
2. The probability of a fatal collision given that a collision occurs (P(FC|C))
3. The probability of a casualty collision given that a collision occurs (P(CC|C))

(c) The following factors are the determinants of the number of predicted collisions per year:

1. Average annual daily traffic
2. Total number of trains per day
3. Number of highway lanes
4. Number of main tracks
5. Maximum timetable train speed
6. Whether the highway is paved or not
7. Number of through trains per day during daylight hours

(d) The resulting basic prediction is improved in two ways. It is enriched by the particular crossing's collision history for the previous five years and it is calibrated by resetting normalizing constants. The normalizing constants are reset so that the sum of the predicted accidents in each warning device group (passive, flashing lights, gates) for the top twenty percent most hazardous crossings exactly equals the number of accidents which occurred in a recent period for the top twenty percent of that group. This adjustment factor allows the formulas to stay current with collision trends. The calibration also corrects for errors such as data entry errors. The final output is the predicted number of collisions (PC).

(e) The severity formulas answer the question, ''What is the chance that a fatality (or casualty) will happen, given that a collision has occurred?'' The fatality formula calculates the probability of a fatal collision given that a collision occurs (*i.e.*, the probability of a collision in which a fatality occurs) P(FC|C). Similarly, the casualty formula calculates the probability of a casualty collision given that a collision occurs P(CC|C). As casualties consist of both fatalities and injuries, the probability of a non-fatal injury collision is found by subtracting the probability of a fatal collision from the probability of a casualty collision. To convert the probability of a fatal or casualty collision to the number of expected fatal or casualty collisions, that probability is multiplied by the number of predicted collisions (PC).

(f) For the prediction and severity index formulas, please see the following DOT publications: *Summary of the DOT Rail-Highway Crossings Resource Allocation Procedure—Revised*, June 1987, and the *Rail-Highway Crossing Resource Allocation Procedure: User's Guide, Third Edition,* August 1987. Both documents are in the docket for this rulemaking and also available through the National Technical Information Service located in Springfield, Virginia 22161.

Risk Index

(a) The risk index is basically the predicted cost to society of the casualties that are expected to result from the predicted collisions at a crossing. It incorporates three outputs of the DOT prediction formulas. The two components of a risk index are:

1. Predicted Cost of Fatalities = PC × P(FC|C) × (Average Number of Fatalities Observed In Fatal Collisions) × $3 million.
2. Predicted Cost of Injuries = PC × (P(CC|C) − P(FC|C)) × (Average Number of Injuries in Collisions Involving Injuries) × $1,167,000.

PC, P(CC|C), and P(FC|C) are direct outputs of the DOT prediction formulas.

(b) The average number of fatalities observed in fatal collisions and the average number of injuries in collisions involving injuries were calculated by FRA as follows.

(c) The highway-rail incident files from 1999 through 2003 were matched against a data file containing the list of whistle ban crossings in existence from January 1,1999 through December 31, 2003 to identify two types of collisions involving trains and motor vehicles: (1) those that occurred at crossings where a whistle ban was in place during the period, and (2) those that occurred at crossings equipped with automatic gates where a whistle ban was not in place. Certain records were excluded. These were incidents where the driver was not in the motor vehicle, or the motor vehicle struck the train beyond the 4th locomotive or rail car that entered the crossing. FRA believes that sounding the train horn would not be very effective at preventing such incidents.[1]

(d) Collisions in the group containing the gated crossings nationwide where horns are routinely sounded were then identified as either fatal, injury only, or no casualty. Collisions were identified as fatal if one or more deaths occurred, regardless of whether or not injuries were also sustained. Collisions were identified as injury only when injuries, but no fatalities, resulted.

(e) The collisions (incidents) selected were summarized by year from 1999 through 2003. The total number of collisions for the period was 2,161. The fatality rate for each year was calculated by dividing the number of fatalities (''Deaths'') by the number of fatal incidents (''Number''). The injury rates were calculated by dividing the number of injuries in injury only incidents (''Injured'') by the number of injury only incidents (''Number'').

[1] The data used to make these exclusions is contained in blocks 18—Position of Car Unit in Train; 19—Circumstance: Rail Equipment Struck/Struck By Highway User; 28—Number of Locomotive Units; and 29—Number of Cars of the current FRA Form 6180–57 Highway-Rail Grade Crossing Accident/Incident Report.

There were 274 fatal incidents resulting in 324 fatalities and yielding a fatality rate 1.1825 for the period. There were 551 injury-only incidents resulting in 733 injuries and yielding an injury rate 1.3303 for the period.

(f) Per guidance from DOT, $3 million is the value placed on preventing a fatality. The Abbreviated Injury Scale (AIS) developed by the Association for the Advancement of Automotive Medicine categorizes injuries into six levels of severity. Each AIS level is assigned a value of injury avoidance as a fraction of the value of avoiding a fatality . FRA rates collisions that occur at train speeds in excess of 25 mph as an AIS level 5 ($2,287,500) and injuries that result from collisions involving trains traveling under 25 mph as an AIS level 2 ($46,500). About half of grade crossing collisions occur at speeds greater than 25 mph. Therefore, FRA estimates that the value of preventing the average injury resulting from a grade crossing collision is $1,167,000 (the average of an AIS–5 injury and an AIS–2 injury.)

(g) Notice that the quantity [PC*P(FCC)] represents the expected number of fatal collisions. Similarly, {PC*[P(CC|C)–P(FC|C)]} represents the expected number of injury collisions. These are then multiplied by their respective average number of fatalities and injuries (from the table above) to develop the number of expected casualties. The final parts of the expressions attach the dollar values for these casualties.

(h) The Risk Index for a Crossing is the integer sum of the Predicted Cost of Fatalities and the Predicted Cost of Injuries.

Nationwide Significant Risk Threshold

The Nationwide Significant Risk Threshold is simply an average of the risk indexes for all of the gated crossings nationwide where train horns are routinely sounded. FRA identified 35,803 gated non-whistle ban crossings for input to the Nationwide Significant Risk Threshold.

The Nationwide Significant Risk Threshold rounds to 17,030. This value is recalculated annually.

Crossing Corridor Risk Index

The Crossing Corridor Risk Index is the average of the risk indexes of all the crossings in a defined rail corridor. Communities seeking to establish ''Quiet Zones'' should initially calculate this average for potential corridors.

Quiet Zone Risk Index

The Quiet Zone Risk Index is the average of the risk indexes of all the public crossings in a Quiet Zone. It takes into consideration the absence of the horn sound and any safety measures that may have been installed.

Appendix E to Part 222—Requirements for Wayside Horns

This appendix sets forth the following minimum requirements for wayside horn use at highway-rail grade crossings:

1. Highway-rail crossing must be equipped with constant warning time device, if reasonably practical, and power-out indicator;

2. Horn system must be equipped with an indicator or other system to notify the locomotive engineer as to whether the wayside horn is operating as intended in sufficient time to enable the locomotive engineer to sound the locomotive horn for at least 15 seconds prior to arrival at the crossing in the event the wayside horn is not operating as intended;

3. The railroad must adopt an operating rule, bulletin or special instruction requiring that the train horn be sounded if the wayside horn indicator is not visible approaching the crossing or if the wayside horn indicator, or an equivalent system, indicates that the system is not operating as intended;

4. Horn system must provide a minimum sound level of 92 dB(A) and a maximum of 110 dB(A) when measured 100 feet from the centerline of the nearest track;

5. Horn system must sound at a minimum of 15 seconds prior to the train's arrival at the crossing and while the lead locomotive is traveling across the crossing. It is permissible for the horn system to begin to sound simultaneously with activation of the flashing lights or descent of the crossing arm;

6. Horn shall be directed toward approaching traffic.

Appendix F to Part 222—Diagnostic Team Considerations

For purposes of this part, a diagnostic team is a group of knowledgeable representatives of parties of interest in a highway-rail grade crossing, organized by the public authority responsible for that crossing who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations or recommendations for the public authority concerning the safety needs at that crossing. Crossings proposed for inclusion in a quiet zone should be reviewed in the field by a diagnostic team composed of railroad personnel, public safety or law enforcement, engineering personnel from the State agency responsible for grade crossing safety, and other concerned parties.

This diagnostic team, using crossing safety management principles, should evaluate conditions at a grade crossing to make determinations and recommendations concerning safety needs at that crossing. The diagnostic team can evaluate a crossing from many perspectives and can make recommendations as to what safety measures authorized by this part might be utilized to compensate for the silencing of the train horns within the proposed quiet zone.

All Crossings Within a Proposed Quiet Zone

The diagnostic team should obtain and review the following information about each crossing within the proposed quiet zone:

1. Current highway traffic volumes and percent of trucks;

2. Posted speed limits on all highway approaches;

3. Maximum allowable train speeds, both passenger and freight;

4. Accident history for each crossing under consideration;

5. School bus or transit bus use at the crossing; and

6. Presence of U.S. DOT grade crossing inventory numbers clearly posted at each of the crossings in question.

The diagnostic team should obtain all inventory information for each crossing and should check, while in the field, to see that inventory information is up-to-date and accurate. Outdated inventory information should be updated as part of the quiet zone development process.

When in the field, the diagnostic team should take note of the physical characteristics of each crossing, including the following items:

1. Can any of the crossings within the proposed quiet zone be closed or consolidated with another adjacent crossing? Crossing elimination should always be the preferred alternative and it should be explored for crossings within the proposed quiet zone.

2. What is the number of lanes on each highway approach? Note the pavement condition on each approach, as well as the condition of the crossing itself.

3. Is the grade crossing surface smooth, well graded and free draining?

4. Does the alignment of the railroad tracks at the crossing create any problems for road users on the crossing? Are the tracks in superelevation (are they banked on a curve?) and does this create a conflict with the vertical alignment of the crossing roadway?

5. Note the distance to the nearest intersection or traffic signal on each approach (if within 500 feet or so of the crossing or if the signal or intersection is determined to have a potential impact on highway traffic at the crossing because of queuing or other special problems).

6. If a roadway that runs parallel to the railroad tracks is within 100 feet of the railroad tracks when it crosses an intersecting road that also crosses the tracks, the appropriate advance warning signs should be posted as shown in the MUTCD.

7. Is the posted highway speed (on each approach to the crossing) appropriate for the alignment of the roadway and the configuration of the crossing?

8. Does the vertical alignment of the crossing create the potential for a ''hump crossing'' where long, low-clearance vehicles might get stuck on the crossing?

9. What are the grade crossing warning devices in place at each crossing? Flashing lights and gates are required for each public crossing in a New Quiet Zone. Are all required warning devices, signals, pavement markings and advance signing in place, visible and in good condition for both day and night time visibility?

10. What kind of train detection is in place at each crossing? Are these systems old or outmoded; are they in need of replacement, upgrading, or refurbishment?

11. Are there sidings or other tracks adjacent to the crossing that are often used to store railroad cars, locomotives, or other equipment that could obscure the vision of road users as they approach the crossings in the quiet zone? Clear visibility may help to reduce automatic warning device violations.

12. Are motorists currently violating the warning devices at any of the crossings at an excessive rate?

13. Do accident statistics for the corridor indicate any potential problems at any of the crossings?

14. If school buses or transit buses use crossings within the proposed quiet zone

corridor, can they be rerouted to use a single crossing within or outside of the quiet zone?

Private Crossings Within a Proposed Quiet Zone

In addition to the items discussed above, a diagnostic team should note the following issues when examining any private crossings within a proposed quiet zone:

1. How often is the private crossing used?
2. What kind of signing or pavement markings are in place at the private crossing?
3. What types of vehicles use the private crossing?

School buses
Large trucks
Hazmat carriers
Farm equipment

4. What is the volume, speed and type of train traffic over the crossing?
5. Do passenger trains use the crossing?
6. Do approaching trains sound the horn at the private crossing?

State or local law requires it?
Railroad safety rule requires it?

7. Are there any nearby crossings where train horns sound that might also provide some warning if train horns were not sounded at the private crossing?
8. What are the approach (corner) sight distances?
9. What is the clearing sight distance for all approaches?
10. What are the private roadway approach grades?
11. What are the private roadway pavement surfaces?

Pedestrian Crossings Within a Proposed Quiet Zone

In addition to the items discussed in the section titled, ''All crossings within a proposed quiet zone'', a diagnostic team should note the following issues when examining any pedestrian crossings within a proposed quiet zone:

1. How often is the pedestrian crossing used?
2. What kind of signing or pavement markings are in place at the pedestrian crossing?
3. What is the volume, speed, and type of train traffic over the crossing?
4. Do approaching trains sound the horn at the pedestrian crossing?

State or local law requires it?
Railroad safety rule requires it?

5. Are there any crossings where train horns sound that might also provide some warning if train horns were not sounded at the pedestrian crossing?
6. What are the approach sight distances?
7. What is the clearing sight distance for all approaches?

Appendix G to Part 222—Schedule of Civil Penalties [1]

Section	Violation	Willful Violation
Subpart B—Use of Locomotive Horns		
§ 222.21 Use of locomotive horn:		
(a) Failure to sound horn at grade crossing	$5,000	$7,500
Failure to sound horn in proper pattern	1,000	3,000
(b) Failure to sound horn at least 15 and no more than 20 seconds before crossing;	5,000	7,500
Routine sounding of the locomotive horn more than ¼-mile in advance of crossing	5,000	7,500
§ 222.33		
Failure to sound horn when conditions of § 222.33 are not met	5,000	7,500
§ 222.45		
Routine sounding of the locomotive horn at a grade crossing within a quiet zone	5,000	7,500
§ 222.49		
(b) Failure to provide Grade Crossing Inventory Form information	2,500	5,000
§ 222.59		
(d) Routine sounding of the locomotive horn at a grade crossing equipped with wayside horn	5,000	7,500

PART 229—[AMENDED]

■ 2. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–21302, 21304; 49 CFR 149(c), (m)

§ 229.5 [Amended]

■ 3. Section 229.5 is amended by removing paragraph designations (a) through (p), transferring the definition of ''electronic air brake'' so that it appears in alphabetical order, and adding the following definitions in alphabetical order to read as follows:

Acceptable quality level (AQL). The AQL is expressed in terms of percent defective or defects per 100 units. Lots having a quality level equal to a specified AQL will be accepted approximately 95 percent of the time when using the sampling plans prescribed for that AQL.

* * * * *

Defective means, for purposes of this part, a locomotive equipped with an audible warning device that produces a maximum sound level in excess of 110 dB(A) and/or a minimum sound level below 96 dB(A), as measured 100 feet forward of the locomotive in the direction of travel.

* * * * *

Lot means a collection of locomotives, equipped with the same horn model, configuration, and location, and the same air pressure and delivery system, which has been manufactured or processed under essentially the same conditions.

* * * * *

■ 4. Section 229.129 is revised to read as follows:

§ 229.129 Audible warning device.

(a) Each lead locomotive shall be provided with an audible warning device that produces a minimum sound level of 96dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The device shall be arranged so that it can be conveniently operated from the engineer's usual position during operation of the locomotive.

(b)(1) Each locomotive built on or after June 24, 2005 shall be tested in accordance with this section to ensure that the horn installed on such locomotive is in compliance with paragraph (a) of this section. Locomotives built on or after June 24, 2005 may, however, be tested in accordance with an acceptance sampling scheme such that there is a probability of .05 or less of rejecting a lot with a proportion of defectives equal to an AQL of 1% or less, as set forth in 7 CFR part 43.

(2) Each locomotive built before June 24, 2005 shall be tested in accordance with this section before June 24, 2010 to ensure that the horn installed on such locomotive is in compliance with paragraph (a) of this section.

(3) Each locomotive when rebuilt, as determined pursuant to 49 CFR 232.5, shall be tested in accordance with this section to ensure that the horn installed

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

on such locomotive is in compliance with paragraph (a).

(c) Testing of the locomotive horn sound level shall be in accordance with the following requirements:

(1) A properly calibrated sound level meter shall be used that, at a minimum, complies with the requirements of International Electrotechnical Commission (IEC) Standard 61672–1 (2002–05) for a Class 2 instrument.

(2) An acoustic calibrator shall be used that, at a minimum, complies with the requirements of IEC Standard 60942 (1997–11) for a Class 2 instrument.

(3) The manufacturer's instructions pertaining to mounting and orienting the microphone; positioning of the observer; and periodic factory recalibration shall be followed.

(4) A microphone windscreen shall be used and tripods or similar microphone mountings shall be used that minimize interference with the sound being measured.

(5) The test site shall be free of large reflective structures, such as barriers, hills, billboards, tractor trailers or other large vehicles, locomotives or rail cars on adjacent tracks, bridges or buildings, within 200 feet to the front and sides of the locomotive and microphone. The locomotive shall be positioned on straight, level track.

(6) Measurements shall be taken only when ambient air temperature is between 32 degrees and 104 degrees Fahrenheit inclusively; relative humidity is between 20 percent and 95 percent inclusively; wind velocity is not more than 12 miles per hour and there is no precipitation.

(7) With the exception of cab-mounted or low-mounted horns, the microphone shall be located 100 feet forward of the front knuckle of the locomotive, 15 feet above the top of the rail, at an angle no greater than 20 degrees from the center line of the track, and oriented with respect to the sound source according to the manufacturer's recommendations. For cab-mounted and low-mounted horns, the microphone shall be located 100 feet forward of the front knuckle of the locomotive, four feet above the top of the rail, at an angle no greater than 20 degrees from the center line of the track, and oriented with respect to the sound source according to the manufacturer's recommendations. The observer shall not stand between the microphone and the horn.

(8) Background noise shall be minimal: the sound level at the test site immediately before and after each horn sounding event shall be at least 10 dB(A) below the level measured during the horn sounding.

(9) *Measurement procedures.* The sound level meter shall be set for A-weighting with slow exponential response and shall be calibrated with the acoustic calibrator immediately before and after compliance tests. Any change in the before and after calibration levels shall be less than 0.5 dB. After the output from the locomotive horn system has reached a stable level, the A-weighted equivalent sound level (slow response) for a 10-second duration (LAeq, 10s) shall be obtained either directly using an integrating-averaging sound level meter, or recorded once per second and calculated indirectly. The arithmetic-average of a series of at least six such 10-second duration readings shall be used to determine compliance. The standard deviation of the readings shall be less than 1.5 dB.

(10) Written reports of locomotive horn testing required by this part shall be made and shall reflect horn type; the date, place, and manner of testing; and air flow and sound level measurements. These reports, which shall be signed by the person who performs the test, shall be retained by the railroad, at a location of its choice, until a subsequent locomotive horn test is completed and shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

(d) This section does not apply to locomotives of rapid transit operations which are otherwise subject to this part.

Appendix B to Part 229—[Amended]

■ 4. The entry for § 229.129 ''Audible warning devices'' in appendix B to Part 229 is revised to read as follows:

	Violation	Willful Violation
229.129 Audible warning device:		
(a) prescribed sound levels	$2,500	$5,000
arrangement of device	2,500	5,000
(b) testing	2,500	5,000
(c) test procedures	2,500	5,000
(c)(10) records of tests	2,500	5,000

Issued in Washington, DC, on April 21, 2005.

Robert D. Jamison,

Acting Administrator.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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S. 256/P.L. 109–8

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Apr. 20, 2005; 119 Stat. 23)

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